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**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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October 17, 2023

His Excellency, Governor Christopher Sununu
And the Honorable Council
State House
Concord, New Hampshire 03301

Your Excellency and Members of the Council:

REQUESTED ACTION

Authorize the Department of Justice to conduct a four-day 2023 Trial Advocacy Training Program to be held November 14, 2023 to November 17, 2023 at the New Hampshire Department of Justice in Concord, New Hampshire at a cost not to exceed \$4,239, effective upon Governor and Executive Council approval through December 31, 2023. 100% Agency Income.

Funding is available as follows:

02-20-20-200510-26110000,	<u>SFY 2024</u>
Consumer Protection	
233-500781, Training-Litigation	\$4,239

EXPLANATION

The Department of Justice (DOJ) is committed to providing high-quality, low-cost training opportunities to New Hampshire state and local government attorneys. The National Association of Attorneys General will provide instructors for the 2023 Trial Advocacy Training. This program will provide in-classroom sessions on trial practices and procedures.

The DOJ will be providing the training space for this training. In an effort to maximize the time allotted for instruction, the Department will be providing students with breakfast and lunch. In A Pinch Café will provide a continental breakfast and lunch for the duration of the training. For cost-efficiency, DOJ may also purchase light refreshments for mid-morning and mid-afternoon portions of the event.

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The training agenda and costs are detailed in the attached documentation. This includes food and other training related expenses.

Please let me know if you have any questions concerning this request. Your consideration is greatly appreciated.

Respectfully submitted,



John M. Formella
Attorney General

#4238242

BUDGET	
Description	Cost
Estimated Breakfast Cost by In-A-Pinch	\$1,778
Estimated Lunch Cost by In-A-Pinch:	\$1,734
Estimated Water Provided by In-A-Pinch:	\$301
Estimated Paper Goods Provided by In-A-Pinch:	\$301
Light refreshments provided by the Department of Justice:	\$125
Total:	\$4,239



**NAAG Trial Advocacy Training Program
New Hampshire Attorney General's Office
November 14-17, 2023**

Agenda and Instructions

About This Program

This intensive advocacy training program consists of on-demand lessons covering different aspects of trial advocacy, followed by an in-person, four-day live session. Participants will need to prepare for the live session and complete the on-demand lessons prior to the live session.

The live session consists of case strategy discussions, "learn-by-doing" workshops, and a final mock trial, all based on a fictional case file. In the workshops, you will perform various components of a trial, and faculty will provide constructive feedback. Your goal in each workshop is to perform in-depth questioning or argument regarding a specific area, rather than briefly covering multiple topics. At the final mock trial, you will be paired in teams and will have time to give a more complete performance of each segment.

Each participant has been designated as counsel for either Plaintiff Pat Scranton or Defendant Devon Harding. Unless otherwise noted, you will serve as each other's witnesses during workshops and in the final trial. For example, each Plaintiff's counsel will play Pat Scranton, and each defense counsel will play Devon Harding.

Learning Objectives

This training program will teach you to:

- Develop your case globally, guided by a clear case theory and compelling themes.
- Develop and deliver a persuasive opening statement and closing argument.
- Present and cross-examine witnesses using a goal-oriented approach in support of your case theory.
- Use exhibits in all segments of trial to reinforce your narrative.

Preparation is critical!

For this program to be effective for you and your fellow participants, you must complete the on-demand lessons before the live session. At the live session, you must be prepared to present an opening statement, direct examinations of your witnesses, cross-examinations of the opposing witnesses, and a closing argument. And since the program depends on your participation, it is critical that attend the entire program.

Materials

Participants will receive the *Scranton v. Harding* case file and access to on-demand lessons, which include downloadable handouts and other resources.

A word about NAGTRI

NAGTRI's mission is to provide high quality, responsive, and innovative training to state and territory attorneys general offices. To further our mission, we have designed this training to be engaging and empowering, and to bring out the best in the attorneys who have dedicated themselves to public service.

General Instructions for All Witness Examinations

Instructions for playing the witness:

- Act how you would expect the witness to act. Consider where your loyalties lie.
- If a question calls for information not included in the case file, answer the question as you would expect the witness to answer. You may invent information consistent with the facts in the case file, but do not invent facts that are gratuitously self-serving. And do not contradict the facts in the case file.
- Don't be a stone wall, but don't be a doormat. Please don't be *completely* obstructionist because it can detract from the learning process. However, don't capitulate, either. Stick to your guns!

Instructions for opposing counsel:

- During each performance, *all* opposing counsel not playing the witness shall object where appropriate.

TUESDAY, NOVEMBER 14, 2023

8:30 am – 9:00 am <u>ALL TIMES ARE EASTERN TIME</u>	Participant Registration
9:00 am – 9:30 am	Welcome and Overview of Live Session
9:30 am – 9:45 am	Break
9:45 am – 10:45 am	<p>Case Theory Strategy Discussion</p> <p>This is a forum for you to share ideas and strategize about your case with your fellow counsel.</p> <p>Participants will present their work from the Case Theory and Themes on-demand lesson:</p> <ul style="list-style-type: none"> • Identify the legal elements you (or the opposing party) must prove. • Answer this question persuasively in one or two sentences: "What's this case about?" • Identify compelling words or phrases to characterize the following witnesses, their behavior, or their motivations: <ul style="list-style-type: none"> ○ Pat Scranton ○ Taylor Scranton ○ Devon Harding ○ Jordan Joslin • Identify three conclusions that you want the jury to reach. For each conclusion: <ul style="list-style-type: none"> ○ List at least three facts that support the conclusion. ○ Anticipate what opposing counsel will argue in response to the conclusion. ○ List at least two facts opposing counsel may rely on to challenge your conclusion.
10:45 am – 11:00 am	Break
11:00 am – 11:45 pm	Demonstration: Opening Statement, Direct Examination, Cross-Examination
11:45 pm – 12:45 pm	Lunch.(on your own)
12:45 pm – 1:40 pm	<p>Performance: Direct and Cross-Examination of Taylor Scranton</p> <p>Plaintiff: Each Plaintiff's counsel will conduct a portion of a direct examination of Taylor Scranton. Although you should be prepared to fully examine the witness, the examination will focus in depth on only one topic</p>

	<p>that supports your theory of the case before moving on to another topic.</p> <p>Defendant: Each Defendant's counsel will conduct a portion of a cross-examination of Taylor Scranton on topic areas of their choosing. You may assume that a full direct examination of the witness has occurred.</p> <p>Participants should object (where appropriate) during opposing counsel's examination.</p> <p>6 minutes for direct examination; 2 minutes for feedback; 5 minutes for cross-examination; 2 minutes for feedback</p>
1:40 pm – 1:55 pm	Break
1:55 pm – 2:45 pm	Presentation: Impeachment
2:45 pm – 3:00 pm	Break
3:00 pm – 3:55 pm	<p>Performance: Direct and Cross-Examination of Jordan Joslin</p> <p>Defendant: Each Defendant's counsel will conduct a portion of a direct examination of Jordan Joslin. Although you should be prepared to fully examine the witness, the examination will focus in depth on only one topic that supports your theory of the case before moving on to another topic.</p> <p>Plaintiff: Each Plaintiff's counsel will conduct a portion of a cross-examination of Jordan Joslin on topic areas of their choosing. You may assume that a full direct examination of the witness has occurred.</p> <p>Participants should object (where appropriate) during opposing counsel's examination.</p> <p>6 minutes for direct examination; 2 minutes for feedback; 5 minutes for cross-examination; 2 minutes for feedback</p>
3:55 pm – 4:15 pm	Break (complete surveys)
4:15 pm – 4:30 pm	Wrap-Up Session

WEDNESDAY, NOVEMBER 15, 2023

<p>8:30 am – 9:00 am</p> <p><u>ALL TIMES ARE EASTERN TIME</u></p>	<p>Participant Sign-in</p>
<p>9:00 am – 9:45 am</p>	<p>Performance: Admitting and Using Exhibits</p> <p>Each participant chooses a witness to examine and announces the exhibit they plan to admit and how they will use it to advance their case theory. The participant will then ask the witness questions to lay a foundation for an exhibit from the case file, admit the exhibit, publish it, and ask follow-up questions to advance their case theory.</p> <p>As reflected in the Rules of Court at the end of this Agenda, you may assume that Exhibits 9 and 10 are public records certified pursuant to FRE 803(8) and authentic pursuant to FRE 902.</p> <p>Please skip any background questions and begin with a signpost/headline orienting the witness to the topic regarding the exhibit you will be admitting.</p> <p>If time permits, you may admit and use a second exhibit.</p> <p>Participants should object (where appropriate) during opposing counsel's examination.</p> <p>4 minutes for performance; 2 minutes for feedback</p>
<p>9:45 am – 10:00 am</p>	<p>Break</p>
<p>10:00 am – 10:55 am</p>	<p>Performance: Impeachment by Prior Inconsistent Statement</p> <p>Plaintiff: Each Plaintiff's counsel will impeach Trooper Harding with a prior inconsistent statement. Assume that Trooper Harding stated the following on direct examination:</p> <ol style="list-style-type: none"> 1. While I was pursuing the motorcycle on I-20, I was able to get pretty close to it. I would estimate I was as close as ten feet behind it before it accelerated. Then it eluded me. 2. When I pulled Pat Scranton off of his motorcycle in the parking lot, a crowd started forming around us. Some people were looking at us and yelling, "What's going on?" The crowd was growing hostile, and a few people started walking toward us aggressively. I was fearful for my safety, so I defused the situation by handcuffing Scranton and leading him to my patrol car as quickly as I could. This was exactly how I was trained to handle a situation like that.

	<p>Choose one of those statements to perform an impeachment. If time permits, you can impeach with both statements.</p> <p>Defendant: Each defense counsel will impeach Pat Scranton with a prior inconsistent statement. Assume that Pat Scranton stated the following on direct examination:</p> <ol style="list-style-type: none"> 1. When I was at my parent's house celebrating Taylor's birthday, I had a burger and some potato salad. I drank lemonade with my brother and his friends. No, I didn't have any alcohol. 2. After reflecting on everything that happened, I know I saw Trooper Harding before the night he arrested me. I remember seeing him at the Biker's Retreat Café at least two or three times. He would always be chatting with the owner, Ms. Joslin and getting food. One of the times I saw him, I'm pretty sure he was drinking a beer. Yeah, in his police uniform. <p>Choose one of those statements to perform an impeachment. If time permits, you can impeach with both statements.</p> <p>Participants should object (where appropriate) during opposing counsel's examination.</p> <p>5 minutes for performance; 2 minutes for feedback</p>
10:55 am – 11:10 am	Break
11:10 am – 12:25 pm	<p>Performance: Opening Statements (RECORDED)</p> <p>Each participant will perform a portion of their opening statement. Participants should present their opening statement as if they were at trial and should NOT attempt to condense it to fit within the time allotted. This segment will be video recorded. Participants should use their personal devices to record their opening statements for review with faculty in the next workshop.</p> <p>8 minutes for opening statement; 3 minutes for feedback</p>

12:25 pm – 2:05 pm	<p>Break (Lunch on your own, Video Review & Meet with Trial Partner)</p> <p>Each participant will meet for 10 minutes with their assigned faculty member to review their opening statement previously recorded on their personal device during the last session. The review will focus on delivery and presence, and less on substance.</p> <p>If participants have time, they will also have an opportunity to meet and strategize with their trial partner while also having lunch on their own.</p>
2:05 pm – 3:05 pm	<p>Performance: Direct and Cross-Examination of Pat Scranton</p> <p>Plaintiff: Each Plaintiff's counsel will conduct a portion of a direct examination of Pat Scranton. Although you should be prepared to fully examine the witness, the examination will focus in depth on only one topic that supports your theory of the case before moving on to another topic.</p> <p>Defendant: Each Defendant's counsel will conduct a portion of a cross-examination of Pat Scranton on topic areas of their choosing. You may assume that a full direct examination of the witness has occurred.</p> <p>Participants should object (where appropriate) during opposing counsel's examination.</p> <p>8 minutes for direct examination; 2 minutes for feedback; 5 minutes for cross-examination; 2 minutes for feedback</p>
3:05 pm – 3:20 pm	Break
3:20 pm – 3:55 pm	Demonstration: Impeachment and Closing Argument
3:55 pm – 4:15 pm	Break (complete surveys)
4:15 pm – 4:45 pm	Trial Logistics and Preview

THURSDAY, NOVEMBER 16, 2023

<p>8:30 am – 9:00 am</p> <p><u>ALL TIMES ARE EASTERN TIME</u></p>	<p>Participant Sign-in</p>
<p>9:00 am – 10:00 am</p>	<p>Performance: Direct and Cross-Examination of Devon Harding</p> <p>Defendant: Each Defendant’s counsel will conduct a portion of a direct examination of Devon Harding. Although you should be prepared to fully examine the witness, the examination will focus in depth on only one topic that supports your theory of the case before moving on to another topic.</p> <p>Plaintiff: Each Plaintiff’s counsel will conduct a portion of a cross-examination of Devon Harding on topic areas of their choosing. You may assume that a full direct examination of the witness has occurred.</p> <p>Participants should object (where appropriate) during opposing counsel’s examination.</p> <p>8 minutes for direct examination; 2 minutes for feedback; 5 minutes for cross-examination; 2 minutes for feedback</p>
<p>10:00 am – 10:15 am</p>	<p>Break</p>
<p>10:15 am – 11:30 am</p>	<p>Performance: Closing Arguments</p> <p>Each participant will perform a portion of their closing argument. Participants should present their closing argument as if they were at trial and should NOT attempt to condense it to fit within the time allotted.</p> <p>Prosecution’s counsel can choose to reserve some of their time for rebuttal.</p> <p>8 minutes for performance; 3 minutes for feedback</p>
<p>11:30 am – 1:00 pm</p>	<p>Lunch (on your own) / Meet with Trial Partners / Confer with Opposing Counsel</p> <p>During this extended lunch, trial partners will discuss proposed stipulations and pretrial motions, and any other procedural and substantives issues they expect to address at the Pretrial Conference. Then they will confer with opposing counsel to explore potential areas of agreement before the Pretrial Conference.</p>

1:00 pm – 2:00 pm	Presentation: Ethics and Civility in the Courtroom
2:00 pm – 2:15 pm	Break
2:15 pm – 3:15 pm	Pretrial Conferences Participants will address all stipulations, motions, and other anticipated procedural and substantive issues with the faculty member conducting the pretrial conference.
3:15 pm – 3:35 pm	Break (complete survey)
3:35 pm – 3:45 pm	Wrap-Up Session

FRIDAY, NOVEMBER 17, 2023

8:00 am – 8:30 am ALL TIMES ARE EASTERN TIME	Participant Sign-in
8:30 am – 11:15 am	Final Trial (For details, see Rules of Court below.)
11:15 am – 11:30 am	Break (optional; participants can choose to proceed directly with faculty feedback if they prefer)
11:30 am – 12:00 pm	Faculty Feedback
12:00 pm – 12:20 pm	Break (complete survey)
12:20 pm – 12:55 pm	Debrief Discussion and Closing Remarks

RULES OF COURT

1. Participants should divide the workload for the trial so that each participant conducts an opening statement or a closing argument, and each participant conducts one direct examination and one cross-examination.
2. The witnesses **will** be Pat Scranton and Taylor Scranton for the Plaintiff, and Devon Harding and Jordan Joslin for the defense. Each trial team can choose the order of its own witnesses.
3. The trial is solely on the issue of liability. Parties may introduce evidence regarding damages only if it relates to a matter at issue in this trial (i.e., to attack a witness's credibility).
4. You should assume that all remaining witnesses in the case file (i.e., Ray Sloane, John LeStrange, Dr. Gore) will testify, or have testified, consistently with their prior statements and/or deposition testimony. You may reference them in your opening statement and closing argument.
5. Each participant will play his or her trial partner's witness on direct examination, and for the other trial team's cross-examination.
6. Time limits for the trials are as follows:

- a. Opening Statements (Plaintiff, then Defendant) - 10 minutes per party. You will not be able to bank this time. In other words, you **cannot** apply any of the allotted 10 minutes to your examination of the witnesses, or your side's closing argument.
 - b. All Witness Examinations – a total of 55 minutes per party for both direct and cross-examinations of all witness. Below is a suggested allotment of time for each segment. However, you are not bound to these suggested allotments, and may use more or less time for each segment, as long as you do not exceed the 55-minute total allotment for your side.
 - Plaintiff:
 - Pat Scranton: 25 min (direct)
 - Taylor Scranton: 10 min (direct)
 - Devon Harding: 15 min (cross)
 - Jordan Joslin: 5 min (cross)
 - Defense:
 - Pat Scranton: 15 min (cross)
 - Taylor Scranton: 5 min (cross)
 - Devon Harding: 25 min (direct)
 - Jordan Joslin: 10 min (direct)
 - c. Closing Arguments (Plaintiff argument, then Defendant argument, then Plaintiff rebuttal) - 15 minutes total per party. Prior to the start of closing arguments, Plaintiff should notify the court how much time it wishes to reserve for rebuttal.
7. You will not have time for a complete examination of all witnesses. However, for cross-examinations and closing arguments, parties may assume that a full examination of each witness was performed.
 8. The Federal Rules of Evidence apply. While all exhibits in the case file are available for use, they remain subject to meeting the threshold for admissibility, which issues you should have resolved during the pretrial conference or – at the judge's discretion – at trial.
 9. You may assume that Exhibits 9 and 10 are public records certified pursuant to FRE 803(8) and authentic pursuant to FRE 902.
 10. All motions *in limine* must be raised at the pretrial conference. The judge will not consider any motions *in limine* at trial.
 11. Parties may assume this is a jury trial.