



## 2019 New Mexico Mock Trial Rules



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# I. MOCK TRIAL RULES OF THE COMPETITION

The Rules of the Competition are based upon the rules of the National High School Mock Trial Championship. *Text in italics represents additions or modifications specific to New Mexico. Text in yellow represents changes from the prior year's Rules document.*

## A. ADMINISTRATION

### Rule 1.1. Rules

All trials are governed by the Gene Franchini High School Mock Trial Rules of the Competition and the National High School Mock Trial Rules of Evidence.

Questions or interpretations of these rules are within the discretion of the Mock Trial Coordinator, whose decision is final.

### Rule 1.2. Code of Conduct

The rules of Competition, as well as proper rules of Courthouse and courtroom decorum and security, must be followed. *Proper courtroom attire must be worn by all team members including teacher advisors, attorney coaches and timekeepers. Teams are asked to inform their observers that proper courtroom attire is required.* The Center for Civic Values (CCV) possesses discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, occurring while a team is present for the competition, flagrant rule violations or breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge or the mock trial program. *Abuse of the Rules of Competition and/or Rules of Evidence for the purpose of gaining an unfair advantage during the competition shall be considered a violation of Rule 1.2.*

Attorney and teacher coaches shall not contact the Coordinator during mock trial competition to complain or compel that she take an action. Moreover, attorney and teacher coaches shall not contact a presiding judge or member of the scoring panel to inquire about a round or ask about a particular score or result until the state competition is completed.

### Rule 1.3. Emergencies

During a trial, the Presiding Judge shall have discretion to declare an emergency and adjourn the trial for a short period of time to address the emergency.

In the event of an emergency that would cause a team to be unable to continue a trial or to participate with less than six members, the team must notify CCV as soon as is reasonably practical. If CCV or its designee(s), in its sole discretion, agrees that an emergency exists, CCV, or its designee(s), shall declare an emergency and will decide whether the team will forfeit or may direct that the team take appropriate measures to continue any trial round with less than six members. A penalty may be assessed.

A forfeiting team will receive a loss and points totaling the average number of the Ballots and points received by the losing teams in that round. The non-forfeiting team will receive a win and an average number of Ballots and points received by the winning teams in that round. All fractions resulting from averaging shall be rounded down to the nearest whole number.

Final determination of emergency, forfeiture, reduction of points, or advancement will be made by CCV.

*(a) Medical Emergencies*

*Attorney coaches and teacher advisors are not permitted to enter the well of the courtroom unless there is a medical emergency. If there is a medical emergency, the trial shall be stopped and all necessary actions to protect the health and safety of the participant shall be taken. The Mock Trial Coordinator or her/his designee shall be notified as soon as is practicable; however, emergency medical assistance shall be called immediately, if necessary.*

*(b) Trial Emergencies and Procedure*

*It is recognized that every round of mock trial is subject to the vagaries of the competition and each participant, attorney coach, teacher advisor and judge is reminded that part of the experience is learning how to address unexpected rulings from the Presiding Judge. In extremely rare instances, a Presiding Judge's ruling (including, but not limited to: exclusion of a witness or her/his substantive testimony or exclusion of an exhibit if that exhibit forms the basis of the witness' testimony) may result in a fundamental and substantive modification in the evidentiary outcome of the trial. If the proffering attorney believes the Presiding Judge's ruling both fundamentally and substantively modifies the evidentiary outcome of the trial, then the proffering attorney may use the following procedure to address the issue:*

- i. The proffering attorney shall stand, request permission to address the Court and provide specific information to explain to the Presiding Judge why her/his ruling fundamentally and substantively modifies the evidentiary outcome of the trial.*
- ii. If the Presiding Judge disagrees and does not change her/his ruling, the proffering attorney may request the Presiding Judge to call a brief recess to contact the Mock Trial Coordinator or her/his designee. The Presiding Judge shall call a recess and contact the Mock Trial Coordinator or her/his designee.*
- iii. During the recess or intervention, the Mock Trial Coordinator or her/his designee shall meet with the Presiding Judge to discuss the ruling. Such meeting shall take place without the participation and outside the presence of both teams. After meeting with the judge, the coordinator shall meet with the proffering attorney and opposing*

*counsel. Each counsel shall have two minutes to present her/his position.*

- iv. Prior to the trial reconvening, the Mock Trial Coordinator or her/his designee shall announce her/his decision in open court, after which the issue shall be considered resolved and no further discussion regarding the issue shall occur.*
- v. All decisions of the Mock Trial Coordinator or her/his designee regarding the Presiding Judge's ruling and remedies, if any, are final.*
- vi. In the event the procedures and requirements of Rule 1.3(b) are frivolously invoked or violated by either teams' members (students, attorney coaches, teacher advisors) or observers, the Mock Trial Coordinator or her/his designee may at her/his discretion sanction the violating team. Sanctions are within the sole discretion of the Mock Trial Coordinator or her/his designee. Such sanctions may include: verbal reprimands, point reduction, removal of the violating individual(s) from the courtroom for the remainder of the round, forfeiture of the round, or ejection of the team from the entire competition.*

#### **Rule 1.4. Student Timekeepers**

- a) Each team attending the mock trial competition is responsible for providing one student as an official timekeeper equipped with two stopwatches. The official timekeeper may be a student who is not one of the official eight team members. In trial, each team is to use a set of "Time Remaining" cards with the following designations to signal time: 20:00, 15:00, 10:00, 5:00, 4:00, 3:00, 2:00, 1:00, 0:40, 0:20, and "STOP". Modification of intervals is not permitted. CCV will provide "Time Remaining" cards and timekeeper instruction materials. Timekeepers must use the "Time Remaining" cards provided by CCV and NO others.*
- b) At the national championship only, each team's official timekeeper is required to attend the scheduled on-site timekeeper orientation, which will be held on Thursday afternoon before competition rounds begin. If a team does not send an official timekeeper to the required orientation meeting, that team will defer to its opponents' official timekeepers in all rounds of the competition. The host committee, at its discretion, may schedule a make-up timekeeper orientation for Friday morning before rounds begin solely for teams that register for the tournament after the Thursday session.*
- c) At the national championship only, if a team desires to assign more than one student to the timekeeper role, then all students who will be assigned to the timekeeper role must attend the timekeeper orientation. (See Rule 1.4(b)). The team's official student timekeeper will keep time for both sides during all competition rounds.*



### **Rule 1.5. Inclement Weather Policy**

*In the event of inclement weather, all participants are advised to check the CCV website at [civicvalues.org](http://civicvalues.org) for information regarding delays or cancellations. If the majority of teams scheduled to compete in a given region or scheduled to compete at state finals are able to make their way to the competition site, the event will go forward as scheduled, unless the building has been closed by local authorities. If the building has been closed by local authorities, every attempt will be made to reschedule the event.*

## **B. THE PROBLEM**

### **Rule 2.1. The Problem**

The problem is an original fact pattern which may contain any or all of the following: statement of facts, indictment, stipulations, witness statements/affidavits, jury charges, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

The problem shall consist of at least three witnesses per side, all of whom shall have names and characteristics that would allow them to be played by either males or females, *unless otherwise determined by CCV*. Three witnesses must be called.

### **Rule 2.2. Witness Bound by Statements**

Each witness is bound by the facts contained in her/his own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to her/his testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, on direct examination, an attorney asks a question *that* calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 2.3, "outside the scope of the problem." A witness is not bound by facts contained in other witness statements.

### **Rule 2.3. Unfair Extrapolation.**

A fair extrapolation is one that is neutral. Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. *Judges are encouraged to deal with unfair extrapolation objections by instructing the objecting attorney to address the matter through impeachment on cross-examination or during closing arguments (if appropriate).*

If a witness is asked for information not contained in the witness' statement, the answer must be consistent with the statement and may not materially affect the witness' testimony or any substantive issue of the case. *A witness may neither object nor refuse to answer any question posed. Such a response is a violation of the rules and Scoring Judges may adjust the witness' score accordingly.*

Attorneys for the opposing team may refer to Rule 2.3 in a special objection, such as "unfair extrapolation" or "This information is beyond the scope of the problem."

Possible rulings by a judge include:

- a) no extrapolation has occurred;
- b) an unfair extrapolation has occurred;
- c) the extrapolation was fair; or,
- d) ruling is taken under advisement.

The decision of the Presiding Judge regarding extrapolations or evidentiary matters is final.

When an attorney objects to an extrapolation, the judge shall rule in open court to clarify the course of further proceedings. *The Scoring Judges may consider whether such an objection is frivolous and adjust the attorney's score accordingly.*

#### **Rule 2.4. Gender of Witnesses**

*Unless otherwise stated, all witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender.*

#### **Rule 2.5. Voir Dire**

Voir dire examination of a witness is not permitted.

### **C. TEAMS**

#### **Rule 3.1. Team Eligibility**

*Each public and private school in New Mexico may register one to three teams in the Competition. All team members must be enrolled in grades 9 - 12 in the registering school and must meet New Mexico State Board of Education criteria for participation in an extra-curricular activity. Middle school students can compete at the high school level if allowed by the school district and in accordance with NMAA rules.*

*The Competition is sanctioned by the New Mexico Activities Association, and it is the teacher advisor's responsibility to follow the necessary procedures for obtaining approval of eligibility.*

*Teams are responsible for providing transportation to and from the competition and awards ceremony site(s); transportation must be provided in accordance with New Mexico State law and the team's school district policy.*

*Participation by an ineligible team member shall result in forfeiture of each round in which such participation occurred. An ineligible team member may observe competition and, as a spectator, has the same restrictions as those outlined for teacher advisors, attorney coaches, and any other observers.*

*Only those attorneys who have signed the Attorney Coach Agreement provided by CCV shall be eligible for participation as attorney coaches. CCV reserves the right, in its sole discretion, to deny participation by an attorney.*

*Only those team members (teacher advisor, attorney coach, and students) who have signed the Code of Ethical Conduct provided by CCV shall be eligible for participation. Violation of the Code of Ethical Conduct by any team member may result in sanctions, including but not limited to, that team's immediate ejection from the Competition, forfeiture of awards (if applicable), and debarment from future competitions.*

### **Rule 3.2. Team Composition**

Teams consist of *a minimum of six and a maximum of 12 members* assigned to roles representing the Prosecution/Plaintiff and Defense/Defendant sides. Only six members may participate in any given round. (See Rule 3.3 for further explanation referring to team participation.)

At no time may any team for any reason substitute unofficial team members for official team members. *On a form provided by CCV, teams will submit a Team Member List.* The List will become official at the time of **onsite** registration for qualifier and state finals.

*All student team members shall be issued name tags displaying their school code, which must be worn in the Courthouse at all times.*

### **Rule 3.3. Team Presentation**

Teams must present both the Prosecution/Plaintiff and Defense/Defendant sides of the problem, using six team members in each trial round. For each trial round, teams shall use three students as attorneys and three students as witnesses.

### **Rule 3.4. Team Duties**

Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct examination and one cross-examination; in addition, one will present the opening statement and another will present the closing argument. In other words, the eight attorney duties for each team will be divided as follows:

1. Opening Statement
2. Direct Examination of Witness #1
3. Direct Examination of Witness #2
4. Direct Examination of Witness #3
5. Cross Examination of Witness #1
6. Cross Examination of Witness #2
7. Cross Examination of Witness #3
8. Closing Argument (including Rebuttal) [See Rule 4.5]

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

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

Each team must call three witnesses. Witnesses must be called only by their own team during their case-in-chief and examined by both sides. Witnesses may not be recalled by either side.

The Plaintiff/Prosecution need not request or state that it is reserving time for rebuttal.

### **Rule 3.5. Team Roster**

Copies of the Team Roster Form must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams must be identified by the code assigned to them by CCV. No information identifying team origin should appear on the form. Before beginning a trial, the teams must exchange copies of the Team Roster Form. The Form should identify the gender of each witness so that references to such parties will be made in the proper gender. Copies of the Team Roster Form should also be made available to the Judging Panel and Presiding Judge before each round. Teams shall not knowingly disclose their place of origin to any member of the Judging Panel or to the Presiding Judge.

## **D. THE TRIAL**

### **Rule 4.1 Courtroom Setting**

The Plaintiff/Prosecution shall be seated closest to the jury box. No team shall rearrange the courtroom without prior permission of the judge.

### **Rule 4.2. Stipulations**

Stipulations shall be considered part of the record and already admitted into evidence.

### **Rule 4.3 Reading Into the Record not Permitted**

Reading into the record the Stipulations, the Indictment, or the Charge to the Jury shall not be allowed.

### **Rule 4.4. Swearing of Witnesses**

*Witnesses shall be sworn, either individually or as a group using the following oath:*

"Do you promise that the testimony you are about to give will faithfully and truthfully conform to the facts and rules of the mock trial competition?"

### **Rule 4.5. Trial Sequence and Time Limits**

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side);
2. Direct and (optional) Redirect Examination (25 minutes per side);
3. Cross and (optional) Recross Examination (20 minutes per side);
4. Closing Arguments (5 minutes per side).

The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; the Prosecution/Plaintiff may reserve a portion of its closing time for a rebuttal. The Prosecution/Plaintiff's rebuttal is limited to the scope of the Defense's closing argument.

Attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial.

#### **Rule 4.6. Timekeeping**

- a) Each team is required to provide one student who will serve as the official timekeeper for that team. This timekeeper must meet the requirements of Rule 1.4. Timekeepers are responsible for fairly and accurately keeping and reporting the time during the trial presentation and during any disputes under Rule 6.2. During the rounds of the competition, timekeepers are to act as a neutral entity. Timekeepers are not to communicate with their respective teams during the course of the trial presentation, recesses, or during any dispute procedure, except to display the time remaining cards and indicate (as directed by the Presiding Judge) how much time is remaining during a particular part of the trial.
- b) Time limits are mandatory and will be enforced. Time runs from the beginning of the witness examination, opening statement, or closing argument until its conclusion. Introduction of counsel or witnesses prior to the opening statement shall not be included in the time allotted for opening statements. However, if counsel or witnesses are introduced once the opening statement has commenced, such time shall be included in the time allotted for the opening statement. Time stops only for objections, questioning from the judge, or administering the oath. Time does not stop for introduction of exhibits.
- c) Timekeepers should display the applicable "Time Remaining" cards simultaneously. At the end of each task during the trial presentation (i.e. at the end of each opening, at the end each witness examination, at the end of each cross examination and at the end of each closing argument) if there is more than a 15 second discrepancy between the teams' timekeepers, the timekeepers must notify the Presiding Judge of the discrepancy. The Presiding Judge will then rule on the discrepancy, the timekeepers will synchronize their stopwatches accordingly and the trial will continue. Any discrepancies between timekeepers less than 15 seconds will not be considered. No time disputes will be entertained after the trial concludes. The decisions of the Presiding Judge regarding the resolution of time disputes are final.

#### **Rule 4.7. Time Extensions and Scoring**

The Presiding Judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the Scoring Judges may determine individually whether or not to discount points in a category because of the overrun in time.

#### **Rule 4.8. Motions Prohibited**

No motions may be made. The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission.

#### **Rule 4.9. Sequestration**

Teams may not invoke the rule of sequestration (*exclusion of witnesses from courtroom*).

#### **Rule 4.10. Bench Conferences**

Bench conferences may be granted at the discretion of the Presiding Judge, but should be made from the counsel table in the educational interest of handling all matters in open court.

#### **Rule 4.11. Supplemental Material/Costuming**

Teams may refer only to materials included 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 authorized specifically in the case materials. Costuming is defined as hairstyles, clothing, accessories, and make-up which are case-specific.

The only documents that the teams may present to the Presiding Judge or Scoring Panel are the individual exhibits as they are introduced into evidence and the Team Roster Forms. No roster forms may be altered except to provide the information requested. No exhibits may be modified before trial, but attorneys and witnesses may mark exhibits during direct or cross examination. Such marked documents may be used as demonstrative exhibits during the trial and during closing arguments, but may not be entered into evidence. If a team wishes to mark an exhibit entered by the opposing team, it must substitute its own clean copy of that exhibit for this purpose before any markings are made. Exhibit notebooks are not to be provided to the Presiding Judge or Scoring Panel.

Unless provided by *CCV*, name tags or name plates at counsel table are not permitted.

#### **Rule 4.12. Trial Communication**

*Except as set forth in Rule 1.3(a), Medical Emergencies shall not communicate in any way with members of the Judging Panel during a trial. In addition, attorney coaches, teacher advisors, alternates and observers shall not talk to, signal, communicate with, or coach their teams during trial. These rules remain in force during any recess that may occur. Team members may among themselves communicate during the trial; however, no disruptive communication is allowed.*

Signaling of time by the teams' timekeepers shall not be considered a violation of this rule. *Non-participating team members*, teacher advisors, attorney coaches, and observers must remain outside the bar in the spectator section of the courtroom. Only team members participating in the round may sit inside the bar and communicate with each other.

#### **Rule 4.13. Viewing a Trial**

Team members, attorney coaches, teacher advisors, and any other persons directly associated with a mock trial team, except for those authorized by *CCV*, are not allowed to view other teams in competition, *except during the last round of state finals competition*. No person shall display anything that identifies their place of origin while in the courtroom.

#### **Rule 4.14. Videotaping/Photography**

Any team has the option to refuse participation in videotaping, tape recording, still photography by opposing teams.

Media coverage will be allowed.

Media representatives authorized by *CCV* will wear identification badges.

#### **Rule 4.15. Jury Trial**

The case will be tried to a jury; arguments are to be made to *the Presiding Judge* and jury. Teams may address the Scoring Judges as the jury.

#### **Rule 4.16. Standing During Trial**

Unless excused by the judge, attorneys will stand while giving opening *statements and closing arguments, while conducting* direct and cross examinations and *while making or responding* to objections.

#### **Rule 4.17. Objections During Opening Statement/Closing Argument**

No objections may be raised during opening statements or closing arguments.

If a team believes an objection would have been proper during the opposing team's opening statement or closing argument, one of its attorneys may, following the opening statement or closing argument, stand and object and give a response. The Presiding Judge shall not rule on this "objection." Presiding and scoring judges will weigh the "objection individually. No rebuttal by opposing team will be heard.

#### **Rule 4.18. Objections**

##### 1. Argumentative Questions

An attorney shall not ask argumentative questions. However, the Court may, in its discretion, allow limited use of argumentative questions on cross-examination.

##### 2. Lack of Proper Predicate/Foundation

Attorneys shall lay a proper foundation prior to moving the admission of evidence. After motion has been made, the exhibits may still be objected to on other grounds.

3. Assuming Facts Not in Evidence

Attorneys may not ask a question that assumes unproved facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by evidence (sometimes called a "hypothetical question").

4. Questions Calling for Narrative or General Answer

Questions must be stated so as to call for a specific answer. (Example of improper question: "Tell us what you know about this case.")

5. Non-Responsive Answer

A witness' answer is objectionable if it fails to respond to the question asked.

6. Repetition

Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

Teams are not precluded from raising additional objections which are available under the National High School Mock Trial Rules of Evidence.

**Rule 4.19. Reserved**

**Rule 4.20. Procedure for Introduction of Exhibits**

As an example, the following steps effectively introduce evidence.

1. All evidence shall be pre-marked as exhibits.
2. Ask for permission to approach the witness. "Your Honor, may I approach the witness with what has been marked for identification purposes as Exhibit No. \_\_\_?"
3. Show the exhibit to opposing counsel.
4. Ask the witness to identify the exhibit. "I now hand you what has been marked for identification as Exhibit No. \_\_\_\_\_. Would you identify it please?" Witness should answer to identify only.
5. Ask the witness a series of questions that are offered for proof of the admissibility of the exhibit. These questions lay the foundation or predicate for admissibility, including questions of the relevance and materiality of the exhibit.
6. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. \_\_\_ into evidence."
7. Court: "Is there an objection?" (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
8. Opposing Counsel: "No, Your Honor," OR "Yes, Your Honor." If the response is "yes," the objection will be stated for the record. Court: "Is there any response to the objection?"



9. Court: "Exhibit No. \_\_\_\_ (is/is not) admitted." If admitted, questions on content may be asked.

**Rule 4.21. Use of Notes**

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table verbally or through the use of notes. The use of laptops or other electronic devices is prohibited.

**Rule 4.22. Redirect/Recross**

Redirect and recross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the National High School Mock Trial Rules of Evidence.

**Rule 4.23. Scope of Closing Arguments**

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

**Rule 4.24. The Debriefing**

Debriefing following each round by the presiding judge and scoring panel shall be permitted but shall not exceed 10 minutes combined. For qualifier rounds 1 and 3 and round 2 of finals, there shall be no debriefing if the scoring judges have not completed their ballots and chosen the outstanding attorney and witnesses for that round by 12:20pm. There will be no debriefing after round 4 of the qualifier competition and after round 3 of the state competition.

Afternoon rounds for both qualifiers and finals shall commence at 2:00pm.

**Rule 4.25. Offers of Proof**

No offers of proof may be requested or tendered.

**E. JUDGING AND TEAM ADVANCEMENT**

**Rule 5.1. Finality of Decisions**

All decisions of the Judging Panel are FINAL.

**Rule 5.2. Composition of Judging Panels**

The Judging Panel shall consist of at least three individuals. The composition of the Judging Panel and the role of the Presiding Judge will be at the sole discretion of CCV. No former mock trial student team member may judge her or his former team in competition for a period of four years after graduation and no former mock trial attorney or teacher coach may ever judge her or his former team.

The Presiding Judge shall complete a Presiding Judge Tiebreaker Ballot for use if the Ballots of the Scoring Judges are equally divided. The tiebreaker Ballot shall not be included in a team's total Ballots or be used for any other purpose.

The presiding judge will score when there is a short panel and the coordinator will make every effort to place an experienced judge in a trial that has a short panel.

All presiding and Scoring Judges will receive the mock trial packet, orientation materials and a briefing in a judges' orientation.

### **Rule 5.3. Score Sheets/Ballots**

The term "Ballot" will refer to the decision made by a Scoring Judge as to which team made the better presentation in the round. The term "Score Sheet" is used in reference to the form on which *presentation* points are recorded. Score Sheets are to be completed individually by the Scoring Judges. Scoring Judges are not bound by the rulings of the Presiding Judge. The team that earns the highest points on an individual judge's Score Sheet is the winner of that Ballot. The team that receives the majority of the Ballots wins the round. The Ballot votes determine the win/loss record of the team for power-matching and ranking purposes. While the Judging Panel may deliberate about any special awards (i.e., Outstanding Attorney or Witness), the Judging Panel should not deliberate about individual scores.

*Judging Panels may recognize outstanding individual presentation by selecting one outstanding witness and/or one outstanding attorney per round. The decision must be representative of the majority of the Panel members and recorded on the forms provided separately in this packet. The judges may NOT disclose these decisions to anyone other than a mock trial coordinator.*

### **Rule 5.4. Completion of Score Sheets**

Each Scoring Judge shall record a number of points (1-10) for each presentation of the trial. At the end of the trial, each Scoring Judge shall total the sum of each team's individual points, place this sum in the Column Totals box, and enter the team ("P" for prosecution/plaintiff or "D" for defense/defendant) with the higher total number of points in the Tiebreaker Box. NO TIE IS ALLOWED IN THE COLUMN TOTALS BOXES.

In the event of a mathematical error in tabulation by the judges which, when corrected, results in a tie in the Column Totals boxes, the Tiebreaker Box shall determine award of the Ballot.

### **Rule 5.5. Team Advancement/Ranking**

*a. For the purpose of power matching/seeding, teams shall be ranked based on the following criteria in the order listed:*

1. win/loss record - equals the number of rounds won or lost by a team;
2. total number of Ballots - equals the number of Scoring Judges' votes a team earned in preceding rounds;
3. total number of points awarded in preceding rounds; and,
4. point spread against opponents - the point spread is the difference between the total points earned by the team whose tie is being broken less the total points of that team's opponent in each previous round. The

greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.

*b. For the purpose of determining final rankings at the conclusion of qualifiers and state finals, teams shall be ranked based on the following criteria in the order listed:*

1. win/loss record;
2. total number of Ballots won;
3. total number of points awarded; and,
4. point spread against opponents (total points awarded minus total points awarded to opponents).

### **Rule 5.6. Power Matching/Seeding**

A random method of selection will determine opponents in the first round of *qualifier competition, provided that no two teams from the same school shall meet in that round.* A power-match system will determine opponents for all other rounds. *Teams will be seeded for the first round of state finals. That is, after qualifier competition the team in first place shall be matched with the team in last place; the team in second place shall be matched with the team in second to last place, and so on until all advancing teams have been paired with opponents for Round 1 of state finals. If as a result of the seeding, two teams from the same school are matched with each other, no adjustments to the matching shall be made. If as result of power matching, teams that met at qualifiers are paired in a round after Round 1 of finals and assigned to the same side of the case to which they were assigned at qualifiers, those teams may request to change sides of the case. The change will be made only if both teams agree and only after the teacher or attorney coach so informs a mock trial coordinator.*

Power matching will provide that:

1. All teams are guaranteed to present each side of the case at least once;
2. Brackets will be determined by win/loss record. If the number of teams in a win/loss bracket is equal to or greater than twelve (12), the bracket will be split in half to create two (2) sub-brackets for power-matching purposes only. Sorting within brackets and sub-brackets will be determined in the following order: (1) win/loss record; (2) Ballots; (3) total points; then (4) point spread. The team with the highest number of Ballots in the bracket will be matched with the team with the lowest number of Ballots in the bracket; the next highest with the next lowest, and so on until all teams are paired;
3. If there is an odd number of teams in a bracket or sub-bracket, the team at the bottom of that bracket will be matched with the top team from the next lower bracket;
4. Teams will not meet the same opponent twice;
5. To the greatest extent possible, teams will alternate side presentation in subsequent rounds. Bracket integrity in power matching will supersede alternate side presentation

**Rule 5.7. Selection of Sides for Championship Round, if any, at State Finals**

In determining which team will represent which side in the Championship Round, *if any*, the following procedure will be used:

1. The team with the letter code that comes first alphabetically will be considered the "Designated Team."
2. A coin will be tossed by a designee of CCV.
3. If the coin comes up heads, the Designated Team shall represent the plaintiff/prosecution in the final Round. If the coin comes up tails, the Designated Team shall represent the defense/defendant.

**Rule 5.8. Effect of Bye/Default**

A "bye" is necessary when an odd number of teams is present for the tournament. For the purpose of advancement and seeding, when a team draws a bye or wins by default, it shall be given a win and the number of Ballots and points equal to the average of all winning teams' Ballots and points of that same round. *A defaulting team shall receive a loss and the number of Ballots and points equal to the average of all losing teams' Ballots and points of that same round. All fractions resulting from averaging shall be rounded up to the nearest whole number.*

**F. DISPUTE RESOLUTION**

**Rule 6.1. Reporting a Rules Violation/Inside the Bar**

*If during the trial any team has reason to believe that a material violation of the Rules of the Competition has occurred, the alleged violation shall be presented immediately to the Presiding Judge through one of the team attorneys by objection. The Presiding Judge shall rule on the matter, and the trial shall continue. Any alleged violation which is known, or through the exercise of reasonable diligence should have been discovered during the trial and which is not brought to the attention of the Presiding Judge, is promptly waived.*

*If a team has reason to believe that the Presiding Judge has ruled incorrectly on a material violation of the Rules of the Competition, or if the violation could not reasonably have been discovered until after the trial has concluded, a member of the team shall communicate the complaint to the Mock Trial Coordinator immediately after the trial is over and after the judges have recessed.*

**Rule 6.2. Dispute Resolution Procedure**

*The Mock Trial Coordinator shall notify the other team of the complaint and each team shall then designate one team member to present its case to the Coordinator. Each team member shall have three minutes for the presentation to the Coordinator.*

*If the Mock Trial Coordinator determines that a possible rules violation exists or that there exists a legitimate dispute over facts which would constitute a possible rules violation, the judges shall be:*

1. *informed of the dispute by the coordinator;*
2. *given a summary of each team's argument by the coordinator; and,*
3. *allowed to consider the dispute before completing their Ballots.*

**Rule 6.3. Effect of Violation on Score**

*The dispute may or may not affect the judges' scoring decisions, but the matter shall be left to the discretion of the judges. Their decision shall be FINAL.*

**Rule 6.4. Reporting of Rules Violation/Outside the Bar**

(this rule is not applicable in the Gene Franchini High School Mock Trial Competition.)

Disputes which occur outside the bar only during a trial round may be brought by teacher or attorney-coaches exclusively. Such disputes must be made promptly to a trial coordinator or a member of the National Board, who will ask the complaining party to complete a dispute form. The form will be taken to the tournament communication center, whereupon a dispute resolution panel will (a) notify all pertinent parties; (b) allow time for a response, if appropriate; (c) conduct a hearing; and (d) rule on the charge. The dispute resolution panel may notify the Judging Panel of the affected courtroom of the ruling on the charge or may assess an appropriate penalty. The dispute resolution panel will be designated by the National Board.

## II. 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 judge will probably allow the evidence. The burden is on the mock trial team to know the National High School Mock Trial Rules of Evidence and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their 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 represent 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 National High School Mock Trial Rules of Evidence govern the National High School Mock Trial Championship.

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## **Article I. General Provisions**

### **Rule 101. Scope**

These National High School Mock Trial Rules of Evidence govern the trial proceedings of the National High School Mock Trial Championship.

### **Rule 102. Purpose and Construction**

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

## **Article II. Judicial Notice**

### **Rule 201. Judicial Notice of Adjudicative Facts**

(a) This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) The court may judicially notice a fact that is not subject to reasonable dispute because it is a matter of mathematical or scientific certainty. For example, the court could take judicial notice that  $10 \times 10 = 100$  or that there are 5280 feet in a mile.

(c) The court must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) The court may take judicial notice at any stage of the proceeding.

(e) A party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed.

(f) In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

## **Article III. Presumptions in Civil Actions and Proceedings -- Not Applicable**

## **Article IV. Relevancy and its Limits**

### **Rule 401. Test for Relevant Evidence**

Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) the fact is of consequence in determining the action.

### **Rule 402. General Admissibility of Relevant Evidence**

Relevant evidence is admissible unless these rules provide otherwise. Irrelevant evidence is not admissible.

### **Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons**

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

### **Rule 404. Character Evidence; Crimes or Other Acts**

(a) Character Evidence.

(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case:

(A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

(B) a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:

(i) offer evidence to rebut it; and

(ii) offer evidence of the defendant's same trait; and

(C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

(b) Crimes, Wrongs, or Other Acts.

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

#### **Rule 405. Methods of Proving Character**

(a) By Reputation or Opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.

(b) By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

#### **Rule 406. Habit, Routine Practice**

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

#### **Rule 407. Subsequent Remedial Measures**

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or — if disputed — proving ownership, control, or the feasibility of precautionary measures.

#### **Rule 408. Compromise Offers and Negotiations**

(a) Prohibited Uses. Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and



(2) conduct or a statement made during compromise negotiations about the claim — except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

(b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

#### **Rule 409. Offers to Pay Medical And or Similar Expenses**

Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

#### **Rule 410. Pleas, Plea Discussions, and Related Statements**

(a) Prohibited Uses. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

- (1) a guilty plea that was later withdrawn;
- (2) a nolo contendere plea;
- (3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
- (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) Exceptions. The court may admit a statement described in Rule 410(a)(3) or (4):

- (1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or
- (2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

#### **Rule 411. Liability Insurance (civil case only)**

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or proving agency, ownership, or control.

## **Article V. Privileges**

### **Rule 501. General Rule**

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

- (1) communications between husband and wife;
- (2) communications between attorney and client;
- (3) communications among grand jurors;
- (4) secrets of state; and
- (5) communications between psychiatrist and patient.

## **Article VI. Witnesses**

### **Rule 601. General Rule of Competency**

Every person is competent to be a witness.

### **Rule 602. Need for Personal Knowledge**

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703. (*See Rule 2.2*)

### **Rule 607. Who May Impeach A Witness**

Any party, including the party that called the witness, may attack the witness's credibility.

### **Rule 608. A Witness's Character for Truthfulness or Untruthfulness**

(a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

(b) Specific Instances of Conduct. Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

- (1) the witness; or

(2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

### **Rule 609. Impeachment by Evidence of a Criminal Conviction**

(a) In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:

(A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and

(B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and

(2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement.

(b) Limit on Using the Evidence After 10 Years. This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.

(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile Adjudications. Evidence of a juvenile adjudication is admissible under this rule only if:

(1) it is offered in a criminal case;

(2) the adjudication was of a witness other than the defendant;

(3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and

(4) admitting the evidence is necessary to fairly determine guilt or innocence.

(e) Pendency of an Appeal. A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

### **Rule 610. Religious Beliefs or Opinions**

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

### **Rule 611. Mode and Order of Interrogation and Presentation**

(a) **Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) make those procedures effective for determining the truth;

(2) avoid wasting time; and

(3) protect witnesses from harassment or undue embarrassment.

(b) **Scope of cross examination.** The scope of the 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, **including** all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.

(c) **Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

(1) on cross-examination; and

(2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

(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 or re-cross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.

(e) **Permitted Motions.** The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission.

### **Rule 612. Writing Used to Refresh a Witness's Memory**

If a written statement is used to refresh the memory of a witness either while testifying 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 which relate to the testimony of the witness.

### **Rule 613. Witness's Prior Statement**

(a) Showing or Disclosing the Statement During Examination. When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

(b) Extrinsic Evidence of a Prior Inconsistent Statement. Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

## **Article VII. Opinions and Expert Testimony**

### **Rule 701. Opinion Testimony by Lay Witness**

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

(a) rationally based on the witness's perception;

(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and

(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

### **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 thereto in the form of an opinion or otherwise.

### **Rule 703. Bases of an Expert's Opinion Testimony by Experts**

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their

probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

#### **Rule 704. Opinion on Ultimate Issue**

(a) **In General — Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue.

(b) **Exception.** In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

#### **Rule 705. Disclosing the Facts or Data Underlying An Expert’s Opinion**

Unless the court orders otherwise, an expert may state an opinion — and give the reasons for it — without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

### **Article VIII. Hearsay**

#### **Rule 801. Definitions**

The following definitions apply under this article:

(a) **Statement.** “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) **Declarant.** “Declarant” means the person who made the statement.

(c) **Hearsay.** “Hearsay” means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

(d) **Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:

(1) **A Declarant-Witness’s Prior Statement.** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant’s testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(B) is consistent with the declarant’s testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(C) identifies a person as someone the declarant perceived earlier.

(2) An Opposing Party's Statement. The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

### **Rule 802. Hearsay Rule**

Hearsay is not admissible except as provided by these Rules.

### **Rule 803. Exceptions to the Rule Against Hearsay – Regardless of Whether the Declarant is Available as a Witness**

The following are not excluded by the hearsay rule, regardless of whether the declarant is available as a witness:

(1) **Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) **Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(3) **Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) **Statement Made for Medical Diagnosis or Treatment.** A statement that:

(A) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and

(B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

(5) **Recorded Recollection.** A record that:

(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) **Records of a Regularly Conducted Activity.** A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by — or from information transmitted by — someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

(7) **Absence of a Record of a Regularly Conducted Activity.** Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and

(C) neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

(8) **Public Records.** A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or



(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) neither the source of information nor other circumstances indicate a lack of trustworthiness.

(10) **Absence of a Public Record.** Testimony that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

(A) the record or statement does not exist; or

(B) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

(16) **Statements in Ancient Documents.** A statement in a document that is at least 20 years old and whose authenticity is established.

(18) **Statements in Learned Treatises, Periodicals, or Pamphlets.** A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(21) **Reputation Concerning Character.** A reputation among a person's associates or in the community concerning the person's character.

(22) **Judgment of a Previous Conviction.** Evidence of a final judgment of conviction if:

(A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(B) the conviction was for a crime punishable by death or by imprisonment for more than a year;

(C) the evidence is admitted to prove any fact essential to the judgment; and

(D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

#### **Rule 804. Hearsay Exceptions; Declarant Unavailable**

(a) **Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant:

- (1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
- (2) refuses to testify about the subject matter despite a court order to do so;
- (3) testifies to not remembering the subject matter;
- (4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
- (5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

(b) **The Exceptions.** The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

(2) Statement Under the Belief of Imminent Death. In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) Statement Against Interest. A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the

declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(4) Statement of Personal or Family History. A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(5) Not Applicable

(6) Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability. A statement offered against a party that wrongfully caused — or acquiesced in wrongfully causing — the declarant's unavailability as a witness, and did so intending that result.

### **Rule 805. Hearsay within Hearsay**

Hearsay included within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

## **Article IX. Authentication and Identification – N/A**

## **Article X. Contents of Writing, Recordings and Photographs – N/A**

## **Article XI. Other**

### **Rule 1103. Title**

These rules may be known and cited as the National High School Mock Trial Federal Rules of Evidence.

## CRITERIA FOR SCORING A TRIAL ROUND

The following criteria should be considered by scoring evaluators during the course of a team's trial presentation. Evaluators should consider "5" the average point award. All points assessed in a trial round are subjective and should be awarded independent of consultation among Judging Panel members.

### Opening Statement

- Explained, not argued
- Provided a clear and concise case overview
- Described case theme and theory
- Discussed witnesses and their testimony
- Stated relief requested
- Noted burden of proof
- Used notes minimally or not at all
- Stated within time limit

### Direct and Cross Examination

- Observed proper courtroom decorum
- Showed understanding of facts, issues, law and rules
- Used case theme/theory appropriately and effectively
- Used and responded to objections appropriately and effectively
- Did not overuse objections
- Asked questions in appropriate form (non-leading on direct, leading on cross)
- Did not invite unfair extrapolations
- Handled physical evidence appropriately and effectively

### Witness Performance

- Observed appropriate courtroom decorum
- Showed understanding of the facts of the case
- Portrayed character credibly
- Sounded spontaneous, not memorized
- Had no notes
- Poised and observed appropriate courtroom decorum
- Did not extrapolate unfairly
- Avoided unnecessarily long and/or non-responsive answers on cross examination

### Closing Argument

- Continued case theme and theory
- Summarized the evidence
- Emphasized points that support own case or damage opponent's case
- Concentrated on the important, not the trivial
- Argued applicable law
- Discussed burden of proof
- Presented argument persuasively
- Relied on notes minimally or not all

## EXPLANATION OF PRESENTATION RATINGS

Participants will be rated in the categories on the Ballot on a scale of 1 - 10 (with 10 being the highest) according to their roles in the trial. The Scoring Judges are scoring student *presentation* in each category. The Scoring Judges are NOT scoring the legal merits of the case. Each category is to be evaluated separately and fractional points *ARE NOT* to be awarded. One team *MUST* be awarded more total points than the other. The team with the higher number of points shall win the Ballot (and shall be entered in the tiebreaker box on the Ballot). The team winning the majority of the Ballots shall win the round.

Judging Panels also may recognize outstanding individual presentations by selecting one OUTSTANDING ATTORNEY and/or one OUTSTANDING WITNESS per round. The decision must be representative of the majority of the Panel members.

Judges may NOT disclose the Score Sheet/Ballot results or the identities of the Outstanding Attorney and/or Witness to anyone other than a Mock Trial Coordinator.

Points/Strength	Skill Level
1 – 2 (Poor)	<ul style="list-style-type: none"> <li>•Exhibits lack of preparation/understanding of the case materials.</li> <li>•Communication unclear, disorganized and ineffective.</li> <li>•Unsure of self, does not think well on feet, depends heavily upon notes.</li> </ul>
3 – 4 (Below Average)	<ul style="list-style-type: none"> <li>•Exhibits minimal preparation/understanding of the case materials.</li> <li>•Communication minimally clear and organized, but lacking in fluency and persuasiveness.</li> <li>•Minimally self-assured, but lacks confidence under pressure.</li> </ul>
5 – 6 (Average)	<ul style="list-style-type: none"> <li>•Exhibits adequate preparation/understanding of the case materials.</li> <li>•Communication is clear and organized, but could be stronger in fluency and persuasiveness.</li> <li>•Generally self-assured, reads from notes very little.</li> </ul>
7 – 8 (Above Average)	<ul style="list-style-type: none"> <li>•Exhibits mastery of the case materials.</li> <li>•Communication is clear, organized, fluent and persuasive.</li> <li>•Thinks well on feet, poised under pressure, <b>and does not</b> read from notes.</li> </ul>
9 – 10 (Excellent)	<ul style="list-style-type: none"> <li>•Superior in qualities listed for 7-8 above</li> <li>•Sorts essential from nonessential and uses time effectively to accomplish major objectives.</li> <li>•Demonstrates the unique ability to utilize all resources to emphasize vital points of the trial.</li> </ul>



**GENE FRANCHINI HIGH SCHOOL MOCK TRIAL COMPETITION  
SCORE SHEET**

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

Court Room: \_\_\_\_\_ Round (Circle One): 1 2 3 4 Qualifier Final

Ineffective 1-2	Fair 3-4	Average 5-6	Excellent 7-8	Superior 9-10
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**PLEASE DO NOT:** 1) Leave any categories blank; 2) Give any scores of zero; 3) Award fractional points; 4) Allow for a tied score; 5) Inform teams of their scores

		<b>P</b>			<b>D</b>
Opening Statement			Opening Statement		
<b>Prosecution Case</b>					
<i>First Prosecution Witness</i>	Attorney Direct Examination		Attorney Cross Examination		
	Witness Performance				
<i>Second Prosecution Witness</i>	Attorney Direct Examination		Attorney Cross Examination		
	Witness Performance				
<i>Third Prosecution Witness</i>	Attorney Direct Examination		Attorney Cross Examination		
	Witness Performance				
<b>Defense Case</b>					
Attorney Cross Examination			<i>First Defense Witness</i>	Attorney Direct Examination	
				Witness Performance	
Attorney Cross Examination			<i>Second Defense Witness</i>	Attorney Direct Examination	
				Witness Performance	
Attorney Cross Examination			<i>Third Defense Witness</i>	Attorney Direct Examination	
				Witness Performance	
Closing Arguments			Closing Arguments		
Team Decorum & Professionalism			Team Decorum & Professionalism		
Total (Min. 12, Max. 120)			Total (Min. 12, Max. 120)		
<b>TOTAL PROSECUTION SCORE</b>			<b>TOTAL DEFENSE SCORE</b>		

**TIEBREAKER BOX**

(Enter P or D)

Please double-check your scores and return this score sheet to competition staff.

Judge's Name (Print): \_\_\_\_\_  
Judge's Signature and Date: \_\_\_\_\_

# OUTSTANDING WITNESS NOMINATION FORM

*(Optional)*

This form is to be completed by the Presiding Judge, signed by at least three members of the Judging Panel and submitted with the Score Sheets/Ballots by the Presiding Judge to a Mock Trial Coordinator following the round.

**PLEASE PRINT LEGIBLY**

\_\_\_\_\_ / \_\_\_\_\_

Round Number/Courtroom Number

\_\_\_\_\_

Team Code

\_\_\_\_\_

Student Name (from Team Roster)

\_\_\_\_\_ / \_\_\_\_\_

Judge's Signature and Points Given to this Student on your Ballot

\_\_\_\_\_ / \_\_\_\_\_

Judge's Signature and Points Given to this Student on your Ballot

\_\_\_\_\_ / \_\_\_\_\_

Judge's Signature and Points Given to this Student on your Ballot

\_\_\_\_\_ / \_\_\_\_\_

Judge's Signature and Points Given to this Student on your Ballot

\_\_\_\_\_

Presiding Judge's Signature

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# OUTSTANDING ATTORNEY NOMINATION FORM

*(Optional)*

This form is to be completed by the Presiding Judge, signed by at least three members of the Judging Panel and submitted with the Score Sheets/Ballots by the Presiding Judge to a Mock Trial Coordinator following the round.

**PLEASE PRINT LEGIBLY**

\_\_\_\_\_/\_\_\_\_\_  
Round Number/Courtroom Number

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

\_\_\_\_\_  
Student Name (from Team Roster)

\_\_\_\_\_/\_\_\_\_\_  
Judge's Signature and Points Given to this Student on your Ballot

\_\_\_\_\_/\_\_\_\_\_  
Judge's Signature and Points Given to this Student on your Ballot

\_\_\_\_\_/\_\_\_\_\_  
Judge's Signature and Points Given to this Student on your Ballot

\_\_\_\_\_/\_\_\_\_\_  
Judge's Signature and Points Given to this Student on your Ballot

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

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## TEAM ROSTER - PROSECUTION

Team roster forms are to be duplicated and completed prior to each round of competition. Before the start of each round, rosters are to be presented to: Presiding Judge (1); Scoring Judges (3); Opposing Counsel (1).

Your team must be identified ONLY by your Team Code!

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### Team Code

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

Names of Attorneys	Tasks	Witnesses Examined
1) _____ (Student Attorney 1)	Opening/Dir/ C-X	Direct: _____ (Witness) Cross: _____ (Witness)
2) _____ (Student Attorney 2)	Dir/C-X	Direct: _____ (Witness) Cross: _____ (Witness)
3) _____ (Student Attorney 3)	Closing/Dir/C-X	Direct: _____ (Witness) Cross: _____ (Witness)

Names of Witnesses	Gender of Witness		Role to be Portrayed
4) _____	M	F	
5) _____	M	F	
6) _____	M	F	
7) _____	Timekeeper (may not communicate with team)		

---

### ↓ Team Members Not Participating in this Round

8) \_\_\_\_\_

9) \_\_\_\_\_ (only if team is using a 9<sup>th</sup> member exclusively as a timekeeper)

**REMINDER:** Team members not participating must sit behind the bar and may not communicate with participating team members during round.

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## TEAM ROSTER - DEFENSE

Team roster forms are to be duplicated and completed prior to each round of competition. Before the start of each round, rosters are to be presented to: Presiding Judge (1); Scoring Judges (3); Opposing Counsel (1).

Your team must be identified ONLY by your Team Code!

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### Team Code

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

Names of Attorneys	Tasks	Witnesses Examined
1) _____ (Student Attorney 1)	Opening/Dir/ C-X	Direct: _____ (Witness) Cross: _____ (Witness)
2) _____ (Student Attorney 2)	Dir/C-X	Direct: _____ (Witness) Cross: _____ (Witness)
3) _____ (Student Attorney 3)	Closing/Dir/C-X	Direct: _____ (Witness) Cross: _____ (Witness)

Names of Witnesses	Gender of Witness		Role to be Portrayed
4) _____	M	F	
5) _____	M	F	
6) _____	M	F	
7) _____	Timekeeper (may not communicate with team)		

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### ↓ Team Members Not Participating in this Round

8) \_\_\_\_\_

9) \_\_\_\_\_ (only if team is using a 9<sup>th</sup> member exclusively as a timekeeper)

**REMINDER:** Team members not participating must sit behind the bar and may not communicate with participating team members during round.

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## NOTES