

**STUDENT ROSTER**

This form is to be completed prior to the beginning of each Round and handed to the judge when the delegated student introduces the team members.

**SCHOOL AND/OR  
TEAM NAME** \_\_\_\_\_

**ROUND I II**

**III IV SEMIS FINALS** (circle one)

**PLAINTIFF**                      **DEFENDANT**    (circle one)

Please print student names and indicate alternates where applicable.

ATTORNEY \_\_\_\_\_

ATTORNEY \_\_\_\_\_

ATTORNEY \_\_\_\_\_

WITNESS \_\_\_\_\_

WITNESS \_\_\_\_\_

WITNESS \_\_\_\_\_

**SCORE SHEET**

SCORING JUDGE’S NAME: \_\_\_\_\_ DATE: \_\_\_\_\_

PLAINTIFF: \_\_\_\_\_ DEFENDENT: \_\_\_\_\_

**SCORING GUIDELINES** (See Rules 5.3 & 5.4)

Numerical Scores are not to be Disclosed During Debriefing, if any.  
Please rate each team with whole numbers only.  
5 – Outstanding      3 – Good      1 – Fair

<b><u>PLAINTIFF</u></b>	<b>PTS</b>	<b><u>DEFENDANT</u></b>	<b>PTS</b>
Opening Statement		Opening Statement	
Direct/Redirect of Pl. Witness #1		Cross/Re-Cross of Pl. Witness #1	
Testimony of Pl. Witness #1		Cross/Re-Cross of Pl. Witness #2	
Direct/Redirect of Pl. Witness #2		Cross/Re-Cross of Pl. Witness #3	
Testimony of Pl. Witness #2		Direct/Redirect of Def. Witness #1	
Direct/Redirect of Pl. Witness #3		Testimony of Def. Witness #1	
Testimony of Pl. Witness #3		Direct/Redirect of Def. Witness #2	
Cross/Re-Cross of Def. Witness #1		Testimony of Def. Witness #2	
Cross/Re-Cross of Def. Witness #2		Direct/Redirect of Def. Witness #3	
Cross/Re-Cross of Def. Witness #3		Testimony of Defense Witness #3	
Objections Made and Responses		Objections Made and Responses	
Closing Argument and Rebuttal		Closing Argument	
Courtroom Decorum and Presence		Courtroom Decorum and Presence	
Unfair Extrapolation [Subtract Points]		Unfair Extrapolation [Subtract Points]	
Rules Violation [Subtract Points]		Rules Violation [Subtract Points]	
<b>TOTAL (ties not allowed)</b>		<b>TOTAL (ties not allowed)</b>	

# Rules of Competition

*Rules of the Competition  
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## **A. ADMINISTRATION**

### **Rule 1.1. Rules**

All trials will be governed by the Rules of the High School Mock Trial Competition and the High School Mock Trial Rules of Evidence.

Questions or interpretations of these rules are within the discretion of the Director, 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. The Director possesses discretion to impose sanctions, including but not limited to disqualification, immediate eviction from the Championship, and forfeiture of all fees and awards (if applicable) for any misconduct occurring while a team is present for the Competition, for flagrant rule violations, and for 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.

### **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 the Director as soon as is reasonably practical. If the Director, or its designee(s), in its sole discretion, agrees that an emergency exists, the Director, 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.

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

### **Rule 1.4. Student Timekeepers (modified 2006)**

(modified 2006) (a) Each team attending the 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. The host committee will provide "Time Remaining" cards and timekeeper instruction materials.

(modified 2006) (b) 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.

(modified 2006) (c) 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)) If a team does not designate a timekeeper or the designated timekeeper does not attend the timekeeper orientation, the team must defer to their opponent's official timekeeper in all rounds of the competition. The team's official student timekeeper will keep time for both sides during all competition rounds.

## **B. THE PROBLEM**

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

The problem will be 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 three witnesses per side, all of whom shall have names and characteristics which would allow them to be played by either males or females. All three of the witnesses must be called.

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

Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 2.3, "unfair extrapolation."

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.

If a witness is asked 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.

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 statement of facts.”

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 will rule in open court to clarify the course of further proceedings.

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

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**

Teams competing in the National High School Mock Trial Championship must be comprised of students who participated on the current state championship teams. The state coordinator may designate an alternate team from that state's competition should the state championship team be unable to participate, so long as all students on the team are from the same original team.

States may not enter an “allstar” team. The Board shall determine what is an “allstar” team. The Board's determination will be final.

#### **Rule 3.2. Team Composition** (modified 2006)

(modified 2006) Teams consist of **eight** official members assigned to attorney and witness roles representing the prosecution/plaintiff and defense/defendant sides. Only **six** of the eight official members will participate in any given round as attorneys and witnesses. (See Rule 3.3 for further explanation referring to team participation.) Additionally, a person will be designated as the official timekeeper. The official timekeeper must meet the requirements of Rule 1.4 as the team's official timekeeper, and may be (but need not be) one of the eight official members. At no time may any team for any reason substitute other persons for official team

members. The Team Roster will become official at the time of on site registration.

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

Teams must present both the Prosecution/Plaintiff and Defense/Defendant sides of the case, 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 statements and another will present the closing arguments. In other words, the eight attorney duties for each team will be divided as follows:

1. Opening Statements
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.

### **Rule 3.5. Team Roster Form (modified 2006)**

(modified 2006) 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 at registration. 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 team 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**

Stipulations, the indictment, or the Charge to the Jury will not be read into the record.

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

The following oath may be used before questioning begins:

“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?”

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate all witnesses are assumed to be sworn, or the above oath will be conducted by (a) the presiding judge, (b) a bailiff, provided by the host state; or (c) the examining attorney. The host state will indicate which method will be used during all rounds of the current year's tournament. Witnesses may stand or sit during the oath.

### **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 Redirect (optional) Examination. (25 minutes per side)
3. Cross and Re-cross (optional) Examination. (20 minutes per side)
4. Closing Argument (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 (modified 2006)**

(modified 2006) (a) Time limits are mandatory and will be enforced. 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. Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements. Time does not stop for introduction of exhibits.

(modified 2006) (b) 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. 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 over-runs in time.

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

No motions may be made.

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

Teams may not invoke the rule of sequestration.

#### **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 which 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. Exhibit notebooks are not to be provided to the presiding judge or scoring panel.

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

Coaches, teachers, alternates and observers shall not talk to, signal, communicate with, or coach their teams

during trial. This rule remains in force during any emergency recess which 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.

Coaches, teachers, alternates and observers must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar and communicate with each other.

**Rule 4.13. Viewing a Trial** (modified 2006)

(modified 2006) Team members, alternates, attorney/coaches, teacher-sponsors, and any other persons directly associated with a mock trial team, except for those authorized by the Director, are not allowed to view other teams' performances in the competition, so long as their team remains in the 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, and still photography by opposing teams.

Media coverage will be allowed.

Media representatives authorized by the Director will wear identification badges.

**Rule 4.15. Jury Trial**

The case will be tried to a jury; arguments are to be made to 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 and closing statements, during direct and cross examinations, and for all objections.

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

No objections may be raised during opening statements or during 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 to be recognized by the judge and may say, "If I had been permitted to object during closing arguments, I would have objected to the opposing team's statement that \_\_\_\_\_." The presiding judge will not rule on this "objection."

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.
- 2. Lack of Proper Predicate/Foundation:** Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit 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 *High School Mock Trial Rules of Evidence*.

#### **Rule 4.19. Reserved**

#### **Rule 4.20. Procedure for Introduction of Exhibits (modified 2006)**

(modified 2006) (a) All evidence will be pre-marked as exhibit.

(modified 2006) (b) 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. \_\_\_\_\_?"

(modified 2006) (c) Show the exhibit to opposing counsel.

(modified 2006) (d) 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.

(modified 2006) (e) 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.

(modified 2006) (f) Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. \_\_\_\_ into evidence."

(modified 2006) (g) 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.)

(modified 2006) (h) 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?"

(modified 2006) (i) 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.

#### **Rule 4.22. Redirect/Recross**

Redirect and Recross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the 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 Critique**

The judging panel is allowed 10 minutes for debriefing. The timekeeper will monitor the critique following the trial. Presiding judges are to limit critique sessions to a combined total of ten minutes.

Judges shall not make a ruling on the legal merits of the trial. Judges may not inform the students of score sheet results.

#### **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 will consist of at least three individuals. The composition of the judging panel and the role of the presiding judge will be at the discretion of the Director, with the same format used throughout the

competition, as follows:

1. One presiding judge and two scoring judges (all three of whom complete score sheets); or
2. One presiding judge and three scoring judges (scoring judges only complete score sheets); or,
3. One presiding judge and two scoring judges (scoring judges only complete score sheets and presiding judge completes a form which selects only the winner and does not assign point totals for either team).

The scoring judges may be persons with substantial mock trial coaching or scoring experience or attorneys. Each scoring panel shall include at least one attorney. The presiding judge shall be an attorney.

At the discretion of the Director, the Championship round may have a larger panel.

All presiding and scoring judges receive the mock trial manual, a memorandum outlining the case, 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 best presentation in the round. The term "score sheet" is used in reference to the form on which speaker and team points are recorded. The form is attached to these rules. AT the end of each trial, each scoring judge will total the sum of each team's individual speaker points and place this sum in the Sub-Total box. Each scoring judge will then fill in the Team Boxes. Each scoring judge will add the sub-total and team points boxes to achieve a final point total for each team. NO TIE IS ALLOWED IN THE FINAL POINT TOTAL BOX. Score sheets are to be completed individually by the scoring judges. Scoring judges are not bound by the rulings of the presiding judge. The team that earns the highest points on an individual judge's score sheet is the winner of that ballot. The team that receives the majority of the three ballots wins the round. The ballot votes determine the win/loss record of the team for power-matching and ranking purposes. While the judging panel may deliberate on any special awards (i.e., Outstanding Attorney/Witness) the judging panel should not deliberate on individual scores.

### **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 scoring 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**

Teams will be ranked based on the following criteria in the order listed:

1. Win/Loss Record - equals the number of rounds won or lost by a team;
2. Total Number of Ballots - equals the number of scoring judges' votes a team earned in preceding rounds;
3. Total Number of Points Accumulated in Each Round;
4. Point Spread Against Opponents - The point spread is the difference between the total points earned by the team whose tie is being broken less the total points of that team's opponent in each previous round. The greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.

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

Round 1: In Round 1, teams will be paired to argue against other teams on a random basis. Paired teams will then be randomly assigned to argue the side of the Prosecution/Plaintiff or Defense.

Round 2 and subsequent rounds:

1. Teams will not meet other teams from their school.
2. In Round 2, schools will argue the opposite side (Prosecution/Plaintiff or Defense) from the side they argued in Round 1. Every effort will be made to ensure teams do not meet the same opponent twice. If this cannot be avoided, teams will argue the opposite side from the side on which they argued in the previous round in which they met. If four or more rounds are held, each team will argue each side (Prosecution/Plaintiff or Defense) twice.
3. Teams in Rounds 2 and subsequent rounds will not be assigned on a random basis. Pairings will be based upon "Direct Power Matching." The Director and/or her/his designee(s) will power-match Round 2 and subsequent rounds. The guidelines that will be followed are:

Team scores will be kept on score cards in the Tabulation Room. At the end of Round 1, the cards will be sorted into 1-0 teams and 0-1 teams (Ranking teams within these categories on the basis of the number of ballots each team won, then speaker points). Teams with 1-0 records after Round 1 will be matched against each other, adhering to the confines that they **must** switch sides. 1-0 teams who must be Prosecution/Plaintiff will be laid out and the 1-0 teams who must be Defense will be randomly drawn from the remaining 1-0 cards and paired with the Prosecution/Plaintiff teams. If an uneven number of 1-0 teams exist that are locked on sides, the highest ranking team [that can take the missing side] from the next lower category will be pulled up to fill that slot, etc. This process will continue throughout each win/loss section. This system should allow every school to have a good chance of winning at least one Ballot, or at least to have some good competition. At the end of Round 2 and subsequent rounds, the power matching set forth in the preceding paragraph shall be repeated, e.g. 2-0 teams shall be matched against other 2-0 teams, 1-1 v. 1-1 and 0-2 v. 0-2, to the extent possible. In the event of a "conflict" in the power matching rules set forth above, the controlling criteria, in order, are:

- 1) Not meeting a team from one's own school;
- 2) Power matching, i.e. meeting a team with a similar record;
- 3) Being on each side of the case an equal number of times; and
- 4) Not meeting the same opponent twice.

**All tab rooms will be closed until tabulation and power-matching are completed and the next Round's matches are announced to eliminate distraction to the Director and/or her/his designee(s) while power-matching and to minimize time delay.**

The Director has the sole discretion to power match the rounds.

### **Rule 5.7. Selection of Sides For Championship Round**

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

1. The team with the letter/numerical code which comes first alphabetically or numerically will be considered the "Designated Team."
2. The coin will be tossed by a designee of the Director.
3. If the coin comes up heads, the Designated Team shall represent the plaintiff/prosecution in the Championship Round. If the coin comes up tails, the Designated Team shall represent the defendant.

### **Rule 5.8. Odd Number of Teams Participating in Championship**

A "bye" becomes necessary when an odd number of teams are present for any given round of the tournament. It is the intent of the National High School Mock Trial Championship to avoid byes where possible. To avoid having an odd number of teams to start the national championship, the host state, upon determining that an odd number of teams have registered, will have a second team from its own state participate.

In the event of a circumstance resulting in an odd number of competing teams, the following procedure will apply:

- a. The team drawing the "bye" (no opponent for a single trial round) in rounds two through four will, by default, receive a win and three ballots for that round. For the purpose of power-matching, the team will temporarily be given points equal to the average of its own points earned in its preceding trials. At the end of the fourth round, the average from all three actual trial rounds participated in by the team will be used for the final points given for that team's bye round.

For example, a team receiving a bye in round three would receive three ballots and an average of its points earned in rounds one and two. At the end of the fourth round, however, the points actually awarded to the team for the bye round will be adjusted to take into consideration the fourth round performance of the team.

- b. A team receiving a bye in round one will be awarded a win, three ballots and the average number of points for all round one winners, which total will be adjusted at the end of each round to reflect the actual average earned by that team.

## **F. DISPUTE RESOLUTION**

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

Disputes which occur within the bar must be filed immediately following the conclusion of that trial round. Disputes must be brought to the attention of the presiding judge at the conclusion of the trial.

If any team believes that a substantial rules violation has occurred, one of its student attorneys must indicate that the team intends to file a dispute. The scoring panel will be excused from the courtroom, and the presiding judge will provide the student attorney with a dispute form, on which the student will record in writing the nature of the dispute. The student may communicate with counsel and/or student witnesses before lodging the notice of

dispute or in preparing the form.

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

### **Rule 6.2. Dispute Resolution Procedure**

The presiding judge will review the written dispute and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record the reasons for this, announce her/his decision to the Court, retire to complete his/her score sheet (if applicable), and turn the dispute form in with the score sheets. If the judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a spokesperson. After the spokespersons have had time (not to exceed three minutes) to prepare their arguments, the judge will conduct a hearing on the dispute, providing each team's spokesperson three minutes for a presentation. The spokespersons may be questioned by the judge. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider her/his ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

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

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

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

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 the Director, who will ask the complaining party to complete a dispute form. The form will be taken to the tournament's communication's 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 Director.

# **Rules of Evidence**

## **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 are intended to secure fairness in administration of the trials, eliminate unjust delay, and promote the laws of evidence so that the truth may be ascertained.*

## **Article II. Judicial Notice**

Not Applicable

## **Article III. Presumptions in Civil Actions and Proceedings**

Not applicable

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

### **Rule 401. Definition of "Relevant Evidence"**

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

### **Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible**

Relevant evidence is admissible, except as otherwise provided in these Rules. *Irrelevant evidence is not admissible.*

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

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

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

(a) **Character Evidence.** Evidence of a person's character or character trait is not admissible to prove action regarding a particular occasion, except:

(1) **Character of accused.** Evidence of a pertinent character trait offered by an accused, or by the prosecution

to rebut same;

(2) **Character of victim.** Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;

(3) **Character of witness.** Evidence of the character of a witness as provided in Rules 607, 608 and 609.

(b) **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

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

(a) **Reputation or opinion.** In all cases where evidence of character or a character trait is admissible, proof may be made by testimony as to reputation or in the form of an opinion. On cross-examination, questions may be asked regarding relevant, specific conduct.

(b) **Specific instances of conduct.** In cases where character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

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

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

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

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

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

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an

effort to obstruct investigation or prosecution.

**Rule 409. Payment of Medical or Similar Expenses**

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

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

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

- (1) a plea of guilty which was later withdrawn;
- (2) a plea of nolo contendere;
- (3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the forgoing pleas; or
- (4) any statement made in the course of plea discussions made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty which is later withdrawn.

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

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

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

**Article V. Privileges**

**Rule 501. General Rule**

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

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. Lack of Personal Knowledge**

A witness may not testify to a matter unless the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses. (See Rule 2.2.)

### **Rule 607. Who may Impeach**

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

### **Rule 608. Evidence of Character and Conduct of Witness**

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

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

### **Rule 609. Impeachment by Evidence of Conviction of Crime**

*(this rule applies only to witnesses with prior convictions.)*

(a) **General Rule.** For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused has been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was punishable by death or imprisonment in excess of one year, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) **Time Limit.** Evidence of a conviction under this Rule is not admissible if a period of more than ten years

has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines that the value of the conviction substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence

(c) **Effect of pardon, annulment, or certificate of rehabilitation.** Evidence of a conviction is not admissible if (1) the conviction has been the subject of a pardon or other equivalent procedure based on a finding of the rehabilitation of the person convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, other equivalent procedure based on a finding of innocence.

(d) **Juvenile adjudications.** Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) Not applicable.

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

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

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

(a) **Control by Court.** The Court shall exercise reasonable control over questioning of witnesses and presenting evidence so as to:

1. make the questioning and presentation effective for ascertaining the truth,
2. to avoid needless use of time, and
3. protect witnesses from harassment or undue embarrassment.

(b) **Scope of cross examination.** *The scope of cross examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement, 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 of a witness (except as may be necessary to develop the witness' testimony). Ordinarily, leading questions are permitted on cross examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.

(d) **Redirect/Re-cross.** *After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross examination. Likewise, additional questions may be asked by the cross examining attorney on re-cross, but such questions must be*

*limited to matters raised on redirect examination and should avoid repetition.*

**Rule 612. Writing Used to Refresh Memory**

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

**Rule 613. Prior Statements of Witnesses**

Examining witness concerning prior statement. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate.

**Article VII. Opinions and Expert Testimony**

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

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

**Rule 702. Testimony by Experts**

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

**Rule 703. Bases of Opinion Testimony by Experts**

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

**Rule 704. Opinion on Ultimate Issue**

(a) Opinion or inference testimony otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact.

(b) In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the

accused.

### **Rule 705. Disclosure of Facts or Data Underlying Expert Opinion**

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

## **Article VIII. Hearsay**

### **Rule 801. Definitions**

The following definitions apply under this article:

(a) Statement. A "statement" is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) Admission by a party-opponent. The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course in furtherance of the conspiracy.

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

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

### **Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial**

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

- (1) Present sense impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
- (2) Excited utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
- (3) Then existing mental, emotional, or physical conditions. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.
- (4) Statements for purposes of medical diagnosis or treatment. Statements made for the purpose of medical diagnosis or treatment.
- (5) Recorded Recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.
- (6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
- (18) Learned treatises. To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.
- (21) Reputation as to character. Reputation of a person's character among associates or in the community.
- (22) Judgment of previous conviction. Evidence of a judgment finding a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

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

(a) **Definition of unavailability.** "Unavailability as a witness" includes situations in which the declarant -

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

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

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

**(1) Former testimony.** Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

**(2) Statement under belief of impending death.** In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

**(3) Statement against interest.** A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

**(4) Statement of personal or family history.** (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

**(6) Forfeiture by wrongdoing.** A statement offered against a party that has engaged or acquiesced in

wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

**Rule 805. Hearsay within Hearsay**

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

The Host State has the obligation to review Hearsay Rules and make recommendations on omissions or additions to the Hearsay Instructions.

**ARTICLE X. Contents of Writing, Recordings and Photographs**

Not applicable.

**ARTICLE XI. Other**

**Rule 1103. Title**

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

*Host states have the discretion to eliminate rules that do not pertain to the trial at hand.*