

ISBA High School Mock Trial Invitational

RULES AND PROCEDURES HANDBOOK

Edited: November 2020

PLEASE NOTE: This Handbook has not been revised to address the virtual aspects of the 2021 ISBA High School Mock Trial Invitational.

All teams must consult the Supplement to this Handbook (posted on the ISBA Mock Trial webpage) for rules and procedures concerning the virtual program. This Handbook and the Supplement both govern the operations of the 2021 Invitational and should be read in conjunction with one another. To the extent that a rule or procedure in the Supplement conflicts with this Handbook, the Supplement will control for the 2021 Invitational.

A Project of the ISBA Standing Committee on
Law-Related Education for the Public and
Illinois LEARN, Inc.



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PART A. TOURNAMENT RULES, PROCEDURES & GUIDELINES

I. INTRODUCTION

- A. The ISBA High School Mock Trial Invitational provides an opportunity for students to learn what it is like to prepare and present a legal case before the Illinois Courts. Through the mock trial experience, students learn to work as a team, develop oral presentation skills, set goals, plan effectively, think on their feet, and face challenging obstacles with enthusiasm and confidence.
- B. **To the teachers, lawyers and judges who participate in this program:** Thank you for contributing your talents and time! By doing so, you make an exceptional educational opportunity available to the youth of Illinois.
- C. The mock trial presentations at the state level are only one component of this activity and are really a means to “showcase” team achievement. While “winners” are announced, the entire program provides an opportunity for students to learn about the legal system. If students meet the goals set forth below, they have achieved an extraordinary level of success in their high school careers.
- D. While focusing on the educational nature of the program, we recognize that there is a competitive factor as well. In any trial, the judges and jurors may view the case differently than the parties do, and mock trial participants should understand that. Keeping this in mind, teachers and attorneys should prepare students to accept winning or losing at trial with dignity and restraint, and participants should show respect for opposing teams, presiding judges and evaluators.
- E. **All participants must follow all official Invitational Rules.** Schools, teams, or participants who violate the rules may be disqualified and may be eliminated from present and future participation in the program.
- F. Finally, please remember that this is a voluntary, educational program offered with the assistance of volunteer lawyers and judges who donate their time and expertise in an effort to provide an educationally stimulating exercise for the students.
- G. If you have any questions, please email the Mock Trial Coordinator at:
il.hs.mocktrial@gmail.com.
- H. The Illinois State Bar Association thanks the following for their support and assistance with the ISBA High School Mock Trial Invitational:

ISBA Standing Committee on Law-Related Education for the Public

Illinois LEARN, Inc.

II. GOALS OF THE ISBA HIGH SCHOOL MOCK TRIAL INVITATIONAL

- A. Students who participate in the mock trial program increase their knowledge and skills, understand our system of justice better and are able to articulate in a reasoned, thoughtful manner. The ISBA Invitational goals are:
- ✓ To increase student understanding of the American judicial system.
 - ✓ To familiarize students with the law, courtroom procedures, and the legal system.
 - ✓ To build bridges of cooperation, respect and support between the community and the legal profession.
 - ✓ To improve basic skills such as listening, speaking, writing, reading, analyzing, and working as a team.
 - ✓ To learn the meaning of good citizenship in a democracy through participation in our system of law and justice.
 - ✓ To develop team spirit, establish objectives, and work toward a common goal.

III. REGISTRATION PROCEDURES

- A. The Mock Trial Registration Packet and registration procedures are available online:
<http://www.isba.org/teachers/mocktrial>
- B. Please review the Registration Packet carefully to ensure your team completes all necessary steps. The Registration Packet lists required documents and deadlines for submission. Please contact the Mock Trial Coordinator with any questions.
- C. Payment of registration fee must be by check or money order only, made payable to: **LEARN**. Illinois LEARN is a not-for-profit corporation associated with the ISBA. No purchase orders will be accepted.

IV. MOCK TRIAL POLICY-ENTRY CRITERIA

- A. All teams must complete at least one practice trial with another school, or with another team from their school, or a regional competition, prior to attending the Mock Trial Invitational in Champaign. These preliminary trials must be judged or evaluated by a judge or attorney volunteer. A Certification of Participation Form signed by the teacher coach and the judge/attorney must be submitted prior to attending the ISBA High School Mock Trial Invitational.
- B. The ISBA's Standing Committee on Law-Related Education for the Public (LRE Committee) supports the concept of more than one team per high school; however,

due to space and time limitations, official registrations may only be submitted by one team per school or group approved by the LRE Committee.

~~V. — LAW TEST~~ **[There will not be a Law Test as part of the 2021 Invitational.]**

- ~~A. — The written Law Test portion of the Invitational tests the team’s knowledge of the case, the mock trial rules of evidence, and other law related topics. There is a Mock Trial Pre Test available on the ISBA’S Mock Trial website for use in studying for the Law Test. Teachers and coaches may obtain a key by emailing Kim Furr at kfurr@isba.org.~~

~~<http://www.isba.org/sites/default/files/teachers/mocktrial/mocktrialpretest.pdf>~~

~~The format of the Law Test consists of multiple choice and true/false questions. The “team Law Test score” will be the average of the individual team members’ scores. The team with the highest team score on the Law Test will receive the Donna M. Schechter Memorial Law Test Award and will have its name engraved on a perpetual plaque to be displayed at the ISBA office in Springfield, Illinois.~~

~~If a student on the official team roster, including any alternates and timekeepers, is unable to take the Law Test for **any** reason, that student will receive a Law Test score of zero (0) and the score of zero (0) will factor into the overall team’s average score.~~

- ~~B. — Scores from Saturday and Sunday preliminary trials and the team Law Test score will be used to determine which eight teams will participate in the final round of trials. The team Law Test score will not be included in team totals in scoring the final eight trials.~~

- ~~C. — Teams are assigned time slots within which to take the Law Test. Team members must complete the Law Test during the assigned time slot. For example, if your school is assigned to the 10:00 a.m. — 12:00 p.m. slot, your team may start the exam at any time between 10:00 a.m. and 12:00 p.m. and all tests must be turned in by 12:00 p.m. Times will be assigned to teams randomly based on availability of space and trial schedules. Unless the Coordinator receives a “Special Requests Form” before the start of the Invitational, the Coordinator and LRE committee, in their sole discretion, may deny a request for additional accommodations regarding time slots. If a team fails to take the Law Test during its assigned time, the team will receive a zero (0) score on the Law Test, absent extraordinary circumstances to be determined by the Coordinator and the LRE Committee.~~

~~**All members of a team listed on the team’s official team roster must take the Law Test during the team’s assigned time slot, including alternates who do not participate in a trial.** After 10:00 a.m. CST on Saturday, no team will be allowed to make changes to their official team rosters. Changes submitted after that time will not be accepted. The official team roster will be determined by the most recent copy of the roster received by the Coordinator before 10:00 a.m. on Saturday.~~

- ~~D. If a team has a special request for their Law Test time, the team should submit a Special Requests Form, found in the Registration Materials by the deadline provided on the form. Every effort will be made to accommodate all requests; however, **there are no guarantees that requests will be honored.** Teams should plan to be available to take the law test on either day.~~

VI. SCHEDULING

- A. If a team participating in the Invitational has special requests for a trial time on either day, the team should return the appropriate Special Request form, found in the Registration Materials. Every effort will be made to accommodate all requests; however, **there are no guarantees that requests will be honored.** Teams should plan to be available for any mock trial time on either day. Until teams arrive, all times are approximate due to last minute drops and other scheduling issues.

VII. TEAMS

- A. Student Participation. Students participating in the Invitational must be currently enrolled in grades nine (9) through twelve (12) at the time of the Invitational. Each Illinois high school may enter one team consisting of a total of ten (10) students. No more than seven (7) may participate in each trial, with up to three (3) alternates who may participate if one of the seven participants is unable to do so. Alternate team members and timekeepers are included in the maximum ten (10) students that may be listed on the team's official roster.
- B. Affiliation with Approved Sponsor. Each team must be affiliated with a sponsoring school or a group such as a law explorer group, home school group, or other group approved by the LRE Committee. This program is limited; teams will be accepted on a first come/first serve basis as registrations are received.
- C. Adult Coach or Supervisor/Sponsor. Each team, no matter its affiliation, must have an adult coach or supervisor/sponsor. The ISBA does not permit "independent" ad hoc teams comprised of individuals not part of an officially sponsored group. **"All-star" teams pulled from various groups or schools are not acceptable.**
- D. Rules/Forms. All participants must read the Rules and must indicate that they have read and understood them on the appropriate forms provided in the Registration packet.
- E. Failure to Appear. If a team registers for the mock trial event but fails to appear for trial *without reasonable and proper notification*, the team will be prohibited from participating the following year. If a team experiences illness or other problems which render the majority of team members unable to participate, the team may continue in the mock trial program with a minimum of five participants (three acting as attorneys and two acting as witnesses). However, teams with fewer than five available participants will automatically forfeit the opportunity to proceed to the final eight trials but may continue participating so long as the reduced number does not infringe on the ability of the opposing team to perform.

- F. Present Both Sides/Seven Team Members/Alternates. Teams must be prepared to present both sides of the case. Teams may fill the two witness and the attorney positions from their team roster in any manner they choose for any single trial, so long as only seven (7) team members are used. Team members may not switch roles, as identified on the roster, during a trial. **Alternates may participate if needed, but the number of team members participating in each trial may not exceed seven (7).**
- G. Team Roster. Teams must have their official team roster finalized and/or updated and given to the Coordinator before 10:00 a.m. CST on Saturday of the Invitational. Changes submitted after that time will not be accepted.

VIII. TOURNAMENT FORMAT

- A. The ISBA High School Mock Trial Invitational is a two (2) day, weekend event (Saturday and Sunday) with a limited number of officially registered teams presenting their trials during the event. Teams will be accepted on a first-come/first-serve basis based on the order of registration.
- B. Trials will begin at or about 10:00 A.M. on Saturday, depending on the number of teams participating.
- C. Schools and approved groups must make all room reservations on their own and are responsible for all hotel charges. Schools are responsible for all transportation costs. No meals will be provided by the ISBA for this event.
- D. The ISBA, sponsors of the event, and the venue for the program assume no responsibility for student participants. The responsibility for the safety and well-being of the students rests with the participating high schools, teacher coaches, and chaperones.
- E. Teams will be paired for each trial by a random draw. Teams will participate in one (1) trial on Saturday (as prosecution/plaintiff or defense) and will argue the opposite side of the case on Sunday. The teams accumulating the highest number of points will be announced on Sunday. This accumulation includes the results of both trials, plus the team law test score. The ISBA and the LRE Committee may announce the top eight (8) scoring schools and may conduct a final trial. If a final trial is held, a random draw will be made as to which teams face each other and which side each team will represent.
- F. In the event the ISBA, the Coordinator, and the LRE Committee determine that a final trial round is not to be conducted, the top three schools will be announced following the official tournament. The team achieving the highest point total, whether by final trial or not, will advance as Illinois' representative to the National High School Mock Trial Championship.
- G. Witnesses are bound by the facts in their affidavits as well as by the facts in other affidavits if it is apparent that the witness must have known them. If a witness

testifies in contradiction of a fact, the opposition may impeach the testimony, or point out the contradiction on cross-examination by introducing the witness's statement to the court.

- H. The state champion is eligible to participate in the National High School Mock Trial Championship. If the first place team cannot participate, the second place team may participate in their stead. The ISBA will grant **\$1,000** to defray expenses for the National High School Mock Trial Championship. The ISBA will also pay National High School Mock Trial Championship registration fee (**\$500**). The state championship school is responsible for providing funding for any remaining expenses. Winning team members should be prepared to arrive at the event no later than Thursday afternoon and depart on Sunday of the weekend in May during which the National High School Mock Trial Championships is scheduled. The location of the Championship varies.
- I. All witnesses are written in a gender-neutral format.
- J. Voir dire examination of a witness is not permitted.
- K. Each side must call **two (2)** witnesses. Each witness is bound by the facts in his/her witness statement. Teams must announce which witnesses they will be presenting upon entering the courtroom (approximately ten (10) minutes prior to trial time).
- L. No team may call a "hostile" witness.
- M. Trial proceedings are governed by the Mock Trial Rules of Evidence, ISBA Parent/Guardian, Teacher and Student Code of Conduct and Procedures found at <http://www.isba.org/teachers/mocktrial>. Should a situation arise for which the aforementioned documents do not contain, suggest, or describe a solution or a rule, then the rules of the American Mock Trial Association (available at <http://www.collegemocktrial.org/rules-and-forms/>) will govern. Other rules are not to be used at trial.
- N. The ISBA reserves the right to cancel or revise the trial format at any time prior to or during the event, with appropriate notice to participants.

IX. DRESS CODE AND CONDUCT

- A. All participants are expected to display proper courtroom decorum and collegial conduct. This conduct is expected to continue at the hotel and while waiting to go to trial. All participants are also expected to wear appropriate courtroom attire.

X. OVERALL BASIC TOURNAMENT RULES

- A. The Rules of the ISBA High School Mock Trial Invitational Handbook, the ISBA Parent/Guardian, Teacher and Student Code of Conduct and the Mock Trial Rules of Evidence govern this event. Other rules may not be used at trial.

- B. The case materials may contain the following: a statement of facts, complaint, stipulations, witness statements/affidavits, jury instructions, exhibits, etc. The statement of facts is a synopsis of the case and should not be considered an official document for use in the trials. Witness statements and stipulations provided may NOT be disputed at trial. No additional statements/affidavits, jury instructions, exhibits or stipulations may be created by participants. Witness statements may NOT be altered.
- C. Participants must adhere to the time limits specified on the time sheets in this Handbook. Judges may allow teams to finish their presentations should they go over their time allowance; however, points can be deducted. Judges and evaluators will take into account a team's adherence to the time allowances in making their evaluations. Teams may not borrow time from one portion of a trial to use in another portion of a trial.
- D. Each team must furnish an accurate timekeeper. Stopwatches will be provided by the ISBA. See *Guidelines for Students Acting as Timekeepers* later in this Handbook in Part B.
- E. Teams are expected to be in the assigned courtrooms ten (10) minutes before the time trials are scheduled to begin. The start of trial will not be delayed any longer than fifteen (15) minutes beyond the scheduled start time. If a team fails to appear within the fifteen (15) minute time allotment, that team will forfeit the trial and the opposing team will receive a "bye." "Bye" teams are awarded the average number of points achieved by all teams participating in that particular trial time slot. If appropriate arrangements can be made, "bye" teams may go to trial at a later time instead. Extenuating circumstances may be taken into consideration by the judge. Advisors and observers should stay in the courtroom for the entire trial.
- F. The ISBA does not release scores.
- G. There is a **no electronic device** rule in the courtroom, which prohibits the use of iPads, tablet or laptop computers, cell phones, or any other electronic communication or storage devices. Regional or invitational programs are encouraged to implement this rule as well.

XI. DISPUTE RESOLUTION AND RULE VIOLATIONS

- A. Rule Violations During Trial.
 1. If, during the course of a trial, a team has reason to believe that a significant violation of the rules has occurred and that the violation may be corrected during the course of the trial, a member of that team should request a bench conference and communicate the complaint to the presiding judge. To the extent possible, the judge will attempt to resolve the dispute during the course of the trial.
 2. The presiding judge will be allowed to consider the dispute when marking his or her score sheet. The dispute may or may not affect the final decision. The matter

will be left to the discretion of the presiding judge and his or her decision will be final.

3. If the judge is unable to make a determination on a possible rule infraction, a member of the LRE Committee may be consulted.

B. Concerns After Trial Concludes.

1. If concerns remain or were not brought out during trial and a team has a serious reason to believe that a significant rules violation has occurred, **the teacher or lawyer coach** shall communicate the complaint to the presiding judge or to a member of the LRE Committee. The evaluators may continue to complete their score sheets and offer comments to the teams during this time. The Coordinator and the LRE Committee may, at their discretion, call upon representatives from the teams to question about the allegations.
2. All decisions of the Coordinator and the LRE Committee are final. At **no** time should a parent, a non-participating student, or observer bring any allegation to the Coordinator, LRE Committee, or presiding judge.

XII. ROSTERS/ATTENDANCE PROCEDURES DURING TRIAL

- A. Rosters. Each team is required to submit the names of its team members, not to exceed ten (10) members, on an Official Team Roster to the Mock Trial Coordinator by the deadline stated in the Registration packet. The names submitted are the only members that may participate in the event. All changes must be submitted to the Mock Trial Coordinator before 10:00 a.m. CST on the Saturday of the Invitational.
- B. Extra trial roster forms for distribution to the opposing teams will be in your school folder at the check-in desk. Teams must complete a trial roster, not to exceed seven (7) participants, on the form provided or on a similar form before trial and provide one (1) copy to the opposing team, one (1) copy to the presiding judge, and one (1) copy to the evaluators. If possible, provide additional copies for each evaluator. The trial roster forms must be ready at the start of the trial to ensure that trials remain on schedule.

XIII. VIDEOTAPING, PHOTOGRAPHY AND AUDIO RECORDING

- A. Video or audio taping of trials is allowed only if both teams agree, the presiding judge agrees, the camera is stationary, and the taping does not in any way disrupt the trial. **Teams videotaping the trial must submit a copy to the ISBA to be used for educational and promotional purposes.** The recording device should be placed either at the counsels' table or in the audience. Photographs should be taken only before trial begins or after trial concludes. No photos may be taken during the trial proceedings except by photographers designated by the Mock Trial Coordinator and/or ISBA.

XIV. SPACE LIMITATIONS

- A. The ISBA reserves a block of rooms from the host and is restricted to use of those rooms. Some rooms are larger than others. Each school will be given priority seating for the team, teacher and lawyer coach and will also be assigned a number of priority seats in the room for guests observing the trial. If there are empty seats available after those with priority are seated, others may be seated. Please cooperate with the ISBA to ensure that we do not violate the terms of our agreement with the host.
- B. REMEMBER, space at this event is limited. The ISBA and the LRE Committee reserve the right to limit the number of guests viewing any trial. There is a maximum room capacity for each room that must not be exceeded. Consider these limitations when inviting guests. During the Invitational, teams may not change rooms without the express permission of the ISBA and the LRE Committee. Teams violating this rule or causing disruption, whether by the team's students, guests, advisor or teacher, may be immediately disqualified and may be barred from future participation for a period of at least one (1) year at the sole discretion of the LRE Committee Chair.

XV. OBSERVERS

- A. Parents, family members, friends and classmates of team members are welcome to attend and observe the trials of their student's team, provided space limitations permit. Observers should be quiet, courteous and cooperative during the trial.
- B. Observers must be in the room prior to the start of trials. Latecomers cannot be guaranteed entry into trials, as late entry may disturb the trial. If an observer arrives after trials have started, they should speak with an LRE member, a Mock Trial Subcommittee member or the Mock Trial Coordinator before entering any trial room.
- C. Observers may not take photographs, video recordings or audio tapes of the trials once the presiding judge commences the trial, nor at any point throughout the trial or post-trial evaluation period. Observers not complying with this prohibition may be asked to leave the courtroom at any time at the discretion of the judge, the Mock Trial Coordinator, or a LRE Committee member.
- D. Observers may not communicate with any team members once the presiding judge commences the trial proceedings, nor at any point throughout the trial proceedings or post-trial evaluation period.
- E. If an observer believes there is a reason for a dispute, the observer should discuss the issue with the lawyer-coach or teacher. Only teachers and lawyer coaches are permitted to discuss any dispute resolution matters with the LRE Committee and the Coordinator.
- F. It is the responsibility of the teacher, lawyer coach and/or students to ensure that family members and friends who plan to attend the Invitational are aware of these rules and comply with them. All teachers/coaches and students will be asked to sign a code of conduct affirming that all of these rules have been reviewed with any

individual who plans to attend the event. An attendee's failure to comply with the rules stated in this Handbook may result in the attendee being removed from the event, at the discretion of the Coordinator and LRE Committee.

XVI. VIEWING OTHER TRIALS

- A. If space is available after those with seating priority have been seated, students, advisors and teachers may view another team's trial. Students, advisors and teachers of non-participating teams viewing a trial may be asked to leave the courtroom at any time at the discretion of the presiding judge, the Coordinator, or an LRE Committee member.

XVII. PUBLICITY

- A. The ISBA prepares a press release and submits it to the newspapers in the areas where teams are located. The ISBA encourages teams to solicit local publicity. If a school needs assistance in preparing a press release, contact the ISBA at (217) 525-1760. Additionally, some schools demonstrate their preparation before the school board, parents' groups, or local civic organizations. Teams may also want to find a neighboring school and demonstrate the trial before these groups.

XVIII. GUIDELINES FOR LAWYER COACHES/ADVISORS

- A. All teams participating in the Invitational are **STRONGLY ENCOURAGED** to utilize a lawyer coach or advisor to assist them with preparations for the mock trial event. Local lawyer coaches/advisors should be considered an integral part of the educational process. They help fulfill one of the stated goals of this program, *i.e.*, to build bridges of mutual cooperation, respect and support between the community and the legal profession.
- B. All lawyer coaches are expected to adhere to the rules, facts and materials set forth in the ISBA High School Mock Trial Invitational Rules and Procedures Handbook. Please be aware that periodic changes are made to the rules. **Please read all materials carefully.**
- C. Education of students is the goal of the Mock Trial Invitational. Coaches and advisors are reminded to keep the competitive spirit at a reasonable level. This is intended as a learning experience, not a competition. The reality of the adversarial system is that one party wins and the other loses, and coaches should prepare their teams to be ready to accept either outcome in a mature manner. Coaches/advisors prepare students for either outcome by placing the highest value on excellent preparation and presentation, rather than on winning or losing the trial.
- D. Students **MUST** formulate their own openings, closings and questions. Teacher and lawyer coaches/advisors may assist and direct, but the work product must be that of the student participants.

- E. If the lawyer coach/advisor believes there is a reason for a dispute, her or she should consult and follow the dispute resolution steps outlined in Part A, Section XI.
- F. Lawyer coaches/advisors may be asked to judge or evaluate trials (other than a trial in which the lawyer's child or school is a participant) but only if no other lawyer or judge is available to judge or evaluate a trial and only if the trial would not be able to proceed as scheduled without the involvement of the lawyer advisor.

XIX. GUIDELINES FOR TEACHERS

- A. All teachers must be familiar with the ISBA High School Mock Trial Invitational Rules and Procedures Handbook and with the forms that must be submitted so that a school's team can participate in the Invitational. This information is available at the ISBA's webpage at: <http://www.isba.org/teachers/mocktrial>. This website contains valuable training information for teachers about participation in the mock trial event. Periodic changes may be made to the rules and mock trial information. Teachers should frequently check this webpage for updates to the mock trial materials and forms. Teachers are responsible for checking update memoranda placed on the ISBA Mock Trial webpage.
- B. In order to ensure effective communication between teachers, the Mock Trial Coordinator, and the LRE Committee, teachers are responsible for providing accurate e-mail address information to the LRE Committee and the Coordinator.
- C. If a team does not have an attorney-advisor and a teacher acts as the advisor for the team, the teacher must adhere to the guidelines for attorney advisors set forth above. Practice sessions are invaluable. Teachers **MUST** contact other teams in their area to arrange for practice trials.
- D. At the Invitational, teachers are responsible for ensuring that their school's team acts in a courteous, safe and cooperative manner; respects the rights and property of others at the event; and respects the property and premises of the University of Illinois, including all public areas. Teachers are also responsible for ensuring the same conduct of their school's team at any hotel that houses the team during the Invitational.
- E. Teachers are responsible for having their school's team timely participate in the Law Test and timely arrive at their assigned courtrooms for the mock trials in which they are participating.
- F. If the teacher believes there is a reason for a dispute, the teacher should consult and follow the dispute resolution steps outlined in Part A, Section XI.
- G. Perhaps the most important consideration for teachers is to understand and to instill in their school team members that education of students is the goal of the Mock Trial Invitational and the event is intended as a learning experience, not a competition. It is the firm belief of the ISBA and the LRE Committee that any student who successfully completes the rigorous learning program afforded by participation in the mock trial

program will experience an opportunity for personal growth as a result of the experience and will, therefore, have fully achieved the goals set forth by the ISBA and the mock trial program.

XX. EMERGENCIES

- A. Each team shall designate one (1) person who will be the point of contact for the ISBA and the LRE Committee in the event of an emergency. That designated person must be a person who accompanies the team to the Invitational. It is preferred that this designated person be the teacher or attorney advisor for the team.
- B. 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.
- C. An emergency caused by inclement weather or other unexpected or unforeseen occurrence may come up that in the opinion of the ISBA, the Coordinator, and the LRE Committee prevents one or more schools from attending the competition. In such cases, a decision will be made by the ISBA, the Coordinator, and the LRE Committee regarding the rescheduling of the entire Invitational or the rescheduling of individually scheduled team mock trial events. All efforts will be made to give as much advance notice as possible to teams affected by the emergency situation. Each team is responsible for monitoring State and local weather conditions that may prevent or hinder the team from attending the competition and each team should keep the ISBA, the Coordinator, and the LRE Committee informed regarding any such adverse weather conditions.
- D. If a team member is unable to participate in a mock trial event due to illness, injury or other health reason that occurs before the mock trial event commences, the team is responsible for either having a substitute member available or proceeding without that team member.
- E. If after a mock trial event has begun, a team member is unable to continue to participate due to illness, injury, or other health reason, a brief continuance of the event will be allowed in order to determine if the team member will be able to resume his or her participation in the event. If the team member is unable to continue with his or her participation, the team will be allowed without undue delay to immediately substitute a new team member and the mock trial event shall continue.
- F. The ISBA, the Coordinator, and the LRE Committee shall, in their sole discretion, be responsible for any and all final determinations of whether there is an emergency, how any mock trial event will be handled in view of any such emergency and whether there shall be any team forfeiture, reduction of points, or team advancement by reason of the emergency. In exercising that discretion, the ISBA and the LRE Committee may direct that a team take certain appropriate measures which would allow a team to continue with the mock trial.

XXI. JUDGING AND EVALUATION

- A. The presiding judge, who may also score the trial, will conduct each trial. The presiding judge has authority over matters concerning court procedure, and he or she may comment on or question the student attorneys or the witnesses at any time during the trial.
- B. In addition to the presiding judge, at least three (3) scoring evaluators will evaluate each trial. Evaluators may include attorneys, judges, educators, community leaders, law students, and other appropriate individuals approved by the LRE Committee.
- C. At the end of each trial, the presiding judge may render a decision based on the merits of the case. This does not determine whether the team “wins” or “loses” the round for purposes of determining the finalists or other winners. Each presiding judge and scoring evaluator also rates the teams by awarding team points in several categories.
- D. Numerical scores will not be announced at trial or released after the conclusion of the event. It is the policy of the ISBA NOT to release rankings or scores, other than announcing the top eight teams that will progress to the final round of trials. The top three (3) ranked schools will be announced at the conclusion of the program.
- E. THE DECISIONS OF THE JUDGES AND EVALUATORS ARE FINAL AND ARE NOT OPEN TO DISPUTE.

XXII. GUIDELINES FOR PRESIDING JUDGES AND EVALUATORS

- A. Every mock trial has a presiding judge who will rule on the merits of the case, respond to objections and direct the overall trial. In addition to the judge, each mock trial will have evaluators who may be attorneys, judges, paralegals, educators, city officials or others involved in the educational process with some knowledge of the trial process. Evaluators will play the role of jurors.
- B. Prior to each trial, we ask that all presiding judges read the following statement:

While the ISBA, the LRE Committee members, and the volunteer lawyers and judges all strive to evaluate teams and individuals in a fair and equitable manner, as with any subjective rating system there may be perceived inconsistencies. As in the Illinois courts, those who are disappointed and/or pleased with the results are expected to conduct themselves with appropriate decorum and respect. Parents/Guardians, teachers and students have all signed a Code of Conduct and we expect all to follow it.

*In the Mock Trial Handbook, there was a section about Objections that I trust was read and reviewed by both teams prior to today. I want to re-emphasize to you that while you, the attorneys in this case, are permitted to make such objections to questions asked or evidence offered, that you should consider whether the objection **should** be made.*

It is not my purpose to either encourage or discourage objections, but to remind you that when I, as the presiding judge, and the evaluators score this trial, the

nature, manner and frequency of objections will likely be considered and can thus enhance or detract from the evaluation given to an individual attorney or to the team. Thank you.

- C. The High School Mock Trial Invitational Handbook and the Mock Trial Rules of Evidence govern all trials. Please study these rules, case materials and score sheets before judging the trials.
- D. The presiding judge should attempt to move the trial along. Each trial should last approximately one (1) hour. Teams are given specified time limits for each portion of the trial. There will be at least one (1) timekeeper at each trial. The judge may allow a team to finish their presentation if they exceed their allotted time. However, the judge must report the over-time to the evaluators. The presiding judge may also complete a score sheet awarding points to each team.
- E. If Team A determines that Team B has overrun a designated time limitation, Team A may bring the discrepancy to the judge's attention by objecting to the opposing attorney's remarks if the allotted time is exceeded. Judges may permit Team B to conclude its presentation quickly or may halt Team B's presentation accordingly. If time limitations are exceeded during opening or closing, during which objections are not allowed, at the conclusion of the opening/closing, the opposing team may call the time infraction to the judge's attention. Remember, when considering time violations the following are not timed: objections, bench conferences, or swearing in of witnesses.
- F. If a witness invents an answer that is very likely to affect the outcome of the trial, the opposition should object immediately and ask for a bench conference. The presiding judge will decide whether to allow the testimony. There is no objection of "creation of material fact" or "beyond the scope of the mock trial materials." Mock trial participants are expected to address any "creation" through the use of other more realistic objections or through impeaching the witness on cross-examination.
- G. At the conclusion of the trial, the judge may offer a ruling as to which side has won on the merits of the case. This will have no bearing on whether a team actually wins the trial. Evaluators need not render verdicts.
- H. After the trial, judges and evaluators are encouraged to make oral comments which are informational and constructive to the students on their trial presentations. These comments should be BRIEF, as there is limited time between trials.
- I. BEFORE judges and evaluators have started giving their oral comments, they should complete the attached score sheets (sample sheets are at the back of the Handbook). Evaluators must award points based on performance and skills presented at trial. When deciding which team made the better overall team presentation, the judge and evaluators should consider the performances of all attorneys and all witnesses for both sides.

- J. Participants are rated according to a numerical scale. The judges and evaluators are scoring STUDENT ACHIEVEMENT in each category. **Judges and evaluators are not scoring on the merits of the case.** Judges and evaluators may consider penalties for violations of the Invitational's Rules, including any time limit violations. Penalties would reduce point awards in the appropriate categories. Penalties should not be indicated separately on the score sheet.
- K. Judges and evaluators should score each student's performance immediately after that student performs. This ensures that the performance is fresh in the evaluator's mind and that scores are as accurate as possible. "Scoring as you go" is the easiest way to proceed through a mock trial.
- L. Immediately after EACH trial, the completed and signed score sheets must be turned in to the bailiff, who will take them to Coordinator.
- M. **DO NOT SHOW THE SCORE SHEET OR DISCUSS NUMERICAL SCORES WITH THE STUDENTS, TEACHERS, OR ATTORNEY ADVISORS.**
- N. Remember to score as you go!

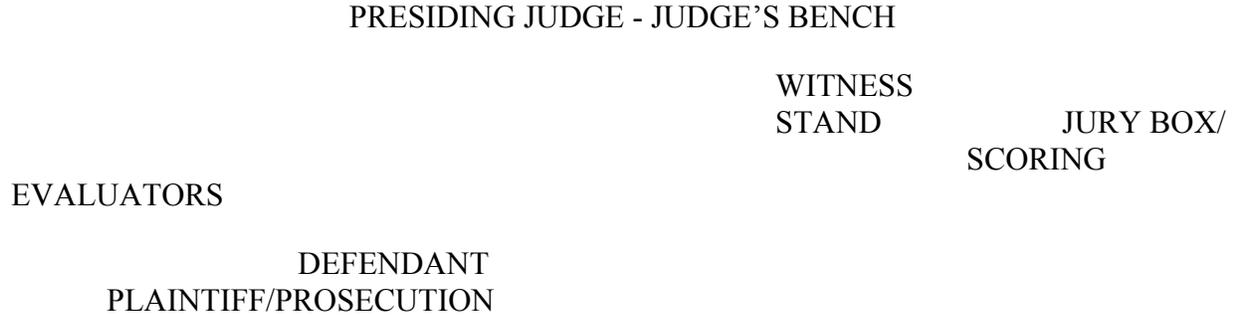
PART B. TRIAL FORMAT, RULES, PROCEDURES & GUIDELINES

This guide contains an overview of the trial process, trial procedures for the competition, tips for attorneys and witnesses, and rules for timekeepers.

Students will be scored using the Score Sheet that appears in the back of the Handbook. Students should be familiar with the Score Sheet, as well as the time constraints and the rules.

All ISBA High School Mock Trial Invitational trials will be conducted as jury trials; however, you do not have to concern yourself with the additional steps involved in a jury trial such as *voir dire* (jury selection) and jury instructions (when the judge explains the law to the jury). Jury instructions may be provided in the mock trial case materials as a guideline on what needs to be proven, but they should not be referred to during trial. For purposes of these trials, please address the evaluators as the jury. Please address the presiding judge when addressing remarks to the court.

I. A TYPICAL COURTROOM LAYOUT



OBSERVERS

This is the format to be used in the mock trial courtrooms.
Plaintiff's side should be seated nearest the witness stand.

II. MOCK TRIAL PARTICIPANTS

- ✓ Judge and evaluators/jurors
- ✓ Attorneys
- ✓ Prosecution and defense (criminal case)
- ✓ Plaintiff and defendant (civil case)
- ✓ Witnesses for each side
- ✓ Student time keeper(s)

III. OVERVIEW OF THE PROGRAM

- A. The ISBA sponsors the High School Mock Trial Invitational as a means of helping students learn about the legal system. Additionally, students will learn to work as a team, develop oral presentation skills, set goals, plan effectively, think on their feet, and face challenging obstacles with enthusiasm and confidence. In preparing for the program, students should keep these goals in mind.

IV. PRETRIAL MOTIONS

- A. When specifically allowed by the judge, pre-trial motions are limited to two minutes. Pre-trial motions may include entering stipulations and any other appropriate motions listed for the case. No other pre-trial motions are allowed. Also, motions in limine are not allowed, nor are motions to exclude witnesses from the courtroom. A motion for directed verdict or dismissal of the case at the end of the prosecution's case may not be used.

- B. A pre-trial conference with the presiding judge may be granted if the judge and parties agree. Student attorneys may request bench conferences during a trial to clear up any procedural or factual questions. Only one representative from each side may be present for all bench conferences. These conferences should be limited to no longer than one minute.

V. BREAKS AND TRIAL DECORUM

- A. During the trial, including any recess or unplanned breaks, coaches and all other observers may not talk, signal, pass notes, or otherwise communicate with or coach their teams (this includes those team members who are alternates during a given trial). Team members not actively participating in the mock trial currently being conducted may not communicate with team members who are actively participating either during the trial or during any recess that may be called. A team may motion for a recess only in the event of an emergency, i.e., health emergency. Should a recess be called, teams are not to communicate with any observers, coaches or instructors regarding the trial. Student attorneys may use notes during the trial, but not on an electronic device (Part A., Section X). Witnesses may not use notes or notecards.
- B. If a witness is using notes/notecards, this is a breach of the rules. As restricting their use of the notes/notecards may harm the opposing team's presentation, the student may continue to use the notes/notecards, but the judge and evaluators should view this as a rule infraction and may penalize with a point reduction.
- C. Team members actively taking part in any given trial may, among themselves, communicate during the trial. However, no disruptive communication is allowed. Again, no communication is allowed between the participating team members and those serving as alternates. **Absolutely no communication is allowed between team members and the lawyer or teacher coaches or parents while the trial is in progress. This includes verbal communications, signals and notes.**
- D. Teams may not request sequestration.
- E. **Be courteous to witnesses, other attorneys, and the judge and evaluators.** Carry your professional attitude with you during the trial, and during the entire mock trial process. During trial, rise when addressing the judge, direct all remarks to the judge or witnesses, and do not make objections unless you have a sound basis and are relatively sure the judge will agree.
- F. The judge is in control of the courtroom, just as in real life. And just as in real life, each judge will preside over the courtroom a bit differently than the next judge. Participants must be prepared to adjust to the rulings and preferences of the judge.

VI. STEPS IN A MOCK TRIAL & GUIDE FOR ATTORNEYS

Attorney duties in each trial include:

- ✓ opening statements;

- ✓ direct examination of witness #1;
- ✓ direct examination of witness #2;
- ✓ cross-examination of witness #1;
- ✓ cross-examination of witness #2;
- ✓ closing arguments.

Each team must be prepared to argue both sides of the case. Each team must call two (2) witnesses and may not call the opposing team's witnesses as part of its own case.

A. Call to Order.

1. The judge will call the court to order and make any necessary announcements. The case will be announced: i.e., "The Court will now hear the case of *State of Illinois v. John Doe*," and the judge will ask the attorneys for each side if they are ready.

B. Opening Statements.

1. The objective of the opening statement is to acquaint the judge and the jury with the case and to outline what you are going to prove through witness testimony and other evidence.
2. NO OBJECTIONS MAY BE MADE DURING OPENING STATEMENTS.
3. ONLY ONE ATTORNEY FOR EACH SIDE SHOULD PRESENT THE OPENING STATEMENT.
4. Include a short summary of the facts; mention the burden of proof (the amount of evidence needed to prove the case) and who has the burden in this case; the applicable law; a clear and concise overview of the witnesses and physical evidence that you will present and how each will contribute to proving your case. Remember, it is essential that you appear confident in your case. Stand before the jury and use eye contact. Students may move about to facilitate expression.
5. Each attorney should introduce him or herself and colleagues to the judge and jury. Plaintiff's attorney should summarize the evidence that will be presented to support the case. Defense's attorney should summarize the evidence that will be presented to rebut the case made by the plaintiff.

C. Direct-Examination by Plaintiff's Attorneys.

1. Attorneys call their witnesses and conduct direct examination in order to present testimony and other evidence to prove their case.
2. The objective of direct examination is to obtain information from favorable witnesses called by the plaintiff to prove the facts of your case, to present the witnesses to the greatest advantage, to establish the witness's credibility and to present enough evidence to warrant a favorable verdict.

3. Each team will be given information about three (3) witnesses and each side must call two (2) witnesses. Teams may not call the witnesses assigned to the other side.
4. Determine the information each witness can contribute to proving your case and prepare a series of questions designed to obtain that information. Be sure that all items needed to prove your case will be presented through your witnesses. Use clear, simple, and open-ended questions. Ask questions that will require more than a “yes” or “no” answer. Do not ask a question to which you don't know the answer.
5. Be relaxed and clear in the presentation of your questions. Listen to all answers given by the witnesses. If you need a moment to think, don't be afraid to ask for a moment to collect your thoughts or to discuss a point with your co-counsel. Simply ask the presiding judge, "Your Honor, may I take a moment?" Please remember that time will not be stopped when you take time to consult your notes, consult with your teammates or collect yourself.
6. The attorney who conducts the direct of a witness will also respond to objections made to the direct examination and will be the one to make objections, if any, during the cross examination of that witness. No other attorney for the plaintiff/prosecution will be allowed to make or respond to objections while that witness is testifying.
7. Direct examination may cover all facts relevant to the case for which the witness has firsthand knowledge.

D. Cross-Examination by Defense’s Attorneys.

1. After the attorney for the plaintiff has completed questioning the witness, the judge allows the defense’s attorney to cross-examine the witness. Generally cross examination questions should be limited to facts brought out on direct. However, for mock trial purposes, attorneys may, in a limited manner, ask questions on matters not brought out during direct examination. The reason for this exception to the general rule occurs when the direct examination was inadequate. If a team asks limited questions on direct as a strategy to undermine the opposing team, they may be penalized by receiving a lower score on the evaluation by not exhibiting sufficient expertise for the evaluators to score. Further, they may hurt their side of the case presentation when the expanded cross-examination brings out necessary information of value to the opposing team.
2. The objective of cross-examination is to obtain favorable information from witnesses called by the opposing counsel, and if a witness has no testimony favorable to you, to make that witness less believable. This is when you may challenge any creation of material fact that the opposing team may have attempted to enter into evidence through impeachment techniques.

3. Ask questions that reflect on the witness's credibility by showing that he or she has given a contrary statement at another time or that the witness may be prejudiced or biased in his or her opinion. Ask questions that weaken the testimony of the witness by showing that his or her opinion is questionable or that the witness is not competent or qualified due to lack of training or experience to render the opinion.
4. An attorney may and should ask leading questions when cross-examining the opponent's witnesses. Questions tending to evoke a narrative answer should be avoided.
5. Adapt your prepared questions to the actual testimony given during the direct examination. Always listen to the witness' answers. Try to avoid giving the witness an opportunity to re-emphasize the points made against your case during direct examination. However, do not harass or attempt to intimidate the witness.
6. The attorney who conducts the cross-examination of a witness will also respond to objections made to the cross examination and will be the one to make objections, if any, during the direct examination of that witness. No other attorney for the defense will be allowed to make or respond to objections while that witness is testifying.

E. Re-Direct by Plaintiff's Attorney.

1. After cross examination, additional questions may be asked by the direct examining attorney. Such questions must be limited to matters raised by the attorney on cross examination. Re-direct is at the discretion of the judge.

F. Re-Cross by Defense Attorney.

1. Likewise, additional questions may be asked by the cross-examining attorney on re-cross provided such questions are limited to matters raised on re-direct examination. Re-cross should avoid repetition. Re-cross is at the discretion of the judge.

G. Defense Attorneys' Case.

1. Attorneys should follow the same format and rules for direct examination, cross examination, re-direct and re-cross as above with the parties reversed.

H. Closing Arguments.

1. The objective of the closing argument is to provide a clear and persuasive summary of the evidence you presented to prove the case, how that evidence proves your argument and what the weaknesses of the other side's case are.
2. NO OBJECTIONS ARE PERMITTED DURING CLOSING ARGUMENT.

3. ONLY ONE PARTICIPANT WILL MAKE THE CLOSING ARGUMENT FOR EACH SIDE.
4. Be an advocate--forcefully urge your point of view but avoid a boring review of the facts. Remember to be careful to adapt your statement at the end of the trial to reflect what the witnesses actually said and what the physical evidence showed.
5. It is not appropriate to cite case law or statutes provided in the mock trial material. These materials are provided as background information to facilitate development of case strategy, etc. Prosecution/Plaintiff may reserve a portion of its closing time for rebuttal. Rebuttal is limited to the scope of the defense's closing argument.
6. The plaintiff's attorney should stand, address the jury and review the evidence. The review should indicate how the evidence has satisfied the elements of the charge or claim, point out the law applicable to the case and ask for a favorable verdict.
7. The defense's attorney should stand, address the jury and also review the evidence, stressing the evidence and the law favorable to the defense's case, showing how the plaintiff failed to prove their case and asking for a verdict favorable to the defense.
8. If a participant would have objected during closing arguments had he or she been permitted to under the rules, after the end of closing arguments, that participant may address the court and advise that "If permitted to do so, I would have objected to (state the objectionable behavior) because (state reason)." The trial judge may comment on the objection. The evaluators may take the objection into consideration in their evaluation.

I. Plaintiff's Rebuttal.

1. If the plaintiff's attorney reserves time for rebuttal, the attorney may rebut only what has been brought out in defense's closing. The time for the closing and the rebuttal combined may not exceed the time allowed for closing.

J. Impeachment.

1. On cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the witness. It may be done by asking questions about prior conduct that makes the witness's credibility doubtful, by showing that the witness is biased for or against one of the parties, by showing that the witness could not have seen or heard what he or she is testifying to, or by asking about evidence of certain types of prior criminal convictions. These types of questions should only be asked if the attorney has information indicating that the conduct actually happened.

- i. Example (Prior conduct): "Isn't it true you were kicked out of college because they discovered you had falsified your application?"
- ii. Example (Past conviction): "Isn't it true that you've been convicted of a criminal offense?"
- iii. Example (Bias): "You do a lot of business with the defendant, don't you?"
- iv. Example (Perception): "Isn't it true that you couldn't hear what she said with fifty people shouting around you?"

2. If the witness's testimony warrants, impeachment may also be done by introducing the witness's affidavit and asking the witness a specific question as to whether he or she has contradicted something that was specifically stated in the affidavit. It is not effective cross-examination to try to impeach a witness on an entire affidavit.

VII. GUIDE FOR WITNESSES

A. Direct Examination.

1. Learn the case thoroughly, especially your witness statement. Know the questions that your attorney will ask you and prepare clear and convincing responses that contain the information the attorney is asking about. Try to be as relaxed but in control as possible. Convey confidence and truthfulness. Do not recite your witness statement verbatim. Know the content of your witness statement prior to trial so you can paraphrase or put it in your own words, but be sure that your testimony is never inconsistent with, nor a material departure from, the facts set forth in your affidavit.

B. Cross-Examination.

1. Anticipate the types of questions or areas of questioning that you will be asked on cross-examination and prepare answers accordingly. Consider the possible weaknesses, inconsistencies, or problems in your testimony and be prepared to explain them. Practice with your attorney, asking him or her to act as opposing counsel.
2. At the hearing, don't be afraid to buy time by saying something like, "Excuse me, just a moment while I try to remember," or "let me take another look at that exhibit, please." Be sure that your testimony is consistent with the facts set forth in your witness statement. Testimony is acceptable so long as it can be reasonably inferred from your fact statement.
3. If asked on cross-examination to testify about information that is not a part of the case materials, you may invent an answer which is consistent with the other

affidavits and facts in the trial. This is in fact an opportunity to create an answer helpful to your side. You may also choose, if asked a question to which your statement gives no answer, to respond with an innocuous answer such as, “I don’t remember” or “I don’t believe I can answer that question, would you please rephrase it?”

C. Other Tips.

1. If you are going to testify about records or documents, familiarize yourself with them thoroughly before coming to trial.
2. When answering questions, speak clearly so that you will be heard.
3. Listen carefully to the questions.
4. Before you answer, make sure you understand what has been asked. If you do not understand, ask that the question be repeated or clarified.
5. If the judge interrupts or an attorney objects to your answer, stop answering immediately. Likewise, if an attorney objects to a question, do not begin your answer until the judge tells you to do so.
6. Witnesses may not use costumes, accents, dialect, etc., but should dress appropriately for the courtroom.

VIII. INTRODUCTION OF PHYSICAL EVIDENCE & PRESENTATION STYLE PROHIBITIONS

- A. Students may read materials other than those provided in preparation for the mock trial; however, they may only cite materials included in the ISBA mock trial packet, and they may only introduce into evidence those exhibits given in the case materials. Teams may NOT cite as authority any material that may be referred to in citations or footnotes in the materials. As far as presentation style, teams are prohibited from using costumes, accents, use of dialect, etc. or other props. **Exhibits may not be enlarged, laminated or otherwise enhanced.**
- B. During the mock trial, a team’s attorney may want to introduce and use as evidence a document (*e.g.* a statement, a letter or a map) or a physical item (*e.g.* a photograph). This may happen during direct examination or it may happen during cross examination. Exhibits when used correctly make the trial more efficient for both a judge and jury. But you must be careful to use your exhibits in a way that does not detract from your presentation of your case.
- C. There are necessary steps that the attorney must take in order to properly introduce the document or item as evidence. These steps must be followed. Adherence to these steps will be considered in the evaluation of an attorney’s performance.

D. It is strongly encouraged that, before you arrive for the mock trial event, your trial team take the following steps in order to save time for everyone at the event and so that you will not be unnecessarily distracted by these tasks while you are trying your case:

1. Since you may not know whether or not you will use the mock trial materials as evidence either in direct or cross-examination, a good practice is to plan on using every document and physical item in the mock trial materials as possible evidence exhibits.
2. Mark the copy of each document or physical item with an exhibit number. If you are a plaintiff/prosecutor, mark your document/item as “Plaintiff’s Exhibit [insert number]”. If you are a defendant, mark your document/item as “Defendant’s Exhibit [insert number]”. You can use any numbering scheme you want, however it is suggested that you use sequential Arabic numerals. It does not matter what order you number your exhibits, as there is no requirement that the exhibits you introduce must be in numerical order. You may, however, want to number your exhibits based upon how you intend to produce the evidence in your case. It may be easier for the judge and evaluators to track the exhibits if they are numbered in the order used.
3. Make at least three (3) copies per trial of each marked exhibit: one (1) to give as a courtesy to the judge, one (1) to give/show to the opposing team, and one (1) for the attorney to use who is offering the exhibit. The original marked exhibit will be used during the examination of the witness. Keep the original and all copies of the exhibit either clipped together or in a single folder so that you can easily access the exhibit at trial.

E. During the trial, you should take the following steps if you want to introduce a document or physical item into evidence:

1. When you are ready to introduce the exhibit, first state that you now intend to show the witness “what I have previously marked **for identification** as [Plaintiff’s/Defendant’s] Exhibit number _____”.
2. State next that you are handing the judge and opposing counsel a “courtesy copy of that exhibit”. Hand a copy of the marked exhibit to the judge and if necessary to opposing counsel.
3. Pause to allow the judge and opposing counsel to view the exhibit, and then ask the judge for permission to proceed.
4. If the judge or opposing counsel indicates an objection to your use of the exhibit, be prepared to defend your right to show the exhibit to the witness and to examine the witness about the exhibit.
5. If you are allowed to proceed, for **direct examination**, show the exhibit to the witness stating: “I show you an exhibit that I have marked as

[Plaintiff's/Defendant's] Exhibit number ____." Do you recognize this [document/item]?"

6. At this point, if the witness states he/she recognizes the exhibit, you would continue questioning the witness about the exhibit **solely for the purpose of laying a sufficient foundation to allow you to offer the exhibit into evidence (see below about foundation)**. You are permitted to ask leading questions to lay a foundation for the introduction of an exhibit. For example, after the witness testifies that he/she recognizes the exhibit as a letter he/she wrote, you may ask: "Is that your signature on the second page of the letter". **You may not at this point have the witness read from or discuss the substance of the exhibit, nor may you ask any substantive questions about the exhibit.**
7. **If you are conducting cross examination**, you do not have to ask the witness if he/she recognizes the exhibit. Rather, you can directly ask the witness to identify the exhibit. For example: "Ms. Smith, Defendant's Exhibit 3 is a letter which you wrote to the Plaintiff, is it not?" As with direct, you can ask leading questions to establish the foundation about the exhibit.

F. **Laying a Foundation for an Exhibit:** When you first show an exhibit to a witness, you must have the witness testify to sufficient facts that establish: (a) that the exhibit is what the witness claims the exhibit to be; (b) that the exhibit is authentic; and (c) that the exhibit is relevant evidence. To establish these facts, you must first establish that the witness has a foundation to answer questions about the exhibit. You must ask the witness a series of questions to establish that the witness has personal knowledge about the exhibit to which he/she will be testifying about.

1. As an example of how to establish that an exhibit is authentic: the witness identifies a letter he/she wrote because the document bears the witness' printed stationary letterhead and bears the witnesses signature and the person to whom the letter is addressed is the witness' mother; that he/she wrote the letter on or about the date stated at the beginning of the letter; and that the witness recalls that he/she mailed the letter to the witness' mother.
2. If the exhibit sought to be introduced is a business record, you should establish the necessary evidentiary basis to have the exhibit admitted as a business record.
3. Assuming you establish the proper foundation, authenticity and relevance of the exhibit, you would then offer the exhibit into evidence by stating: "I offer [Plaintiff's/Defendant's] Exhibit number ____ **into evidence.**" Again, be prepared to defend the basis for entering the exhibit into evidence.
4. If the judge admits the exhibit into evidence, you are then free to have the witness read from the exhibit and you can also then ask substantive questions about what is stated in the exhibit.
5. You are also allowed, if you want, to show any admitted exhibit to the evaluators/jury. To do this, you must ask the judge permission "to publish

[Plaintiff's/Defendant's] Exhibit number ____ to the jury." Any admitted exhibit may be referred to during your closing argument.

- G. **Using an exhibit to refresh recollection:** If you are using a document or physical item **solely** for the purpose of refreshing a witness' recollection, then you **do not** have to follow the steps set forth above. The judge may, however, ask you to mark the document or physical item as a numbered exhibit for identification. A document or physical item used to refresh a witnesses' recollection is not introduced into evidence and it is not evidence that can be referred to during examination of a witness or in closing argument to the jury. Such a document or physical item is used solely to aid the witness' recollection so that the witness can then continue to give testimony about the matter. See the discussion on refreshing recollection set forth previously.
- H. **Using an exhibit to establish past recollection recorded:** If in the course of examining a witness you establish: (a) that the witness has no present and independent recollection of the occurrence or event or matter that is recorded in the exhibit; (b) that the witnesses' recollection cannot be refreshed by use of any document or physical item; and (c) that the witness created, prepared or wrote a document or physical item at or about the time of the events or matters of which you are asking questions and the document or physical item is an accurate recording of those events. You may then offer the document or physical item into evidence by following the foundational steps above and then offering the exhibit as the past recollection recorded of the witness. If the exhibit is admitted, you may not ask any further questions of the witness about the events or matter which are recorded or depicted in the exhibit, however, you may otherwise use the admitted exhibit just as you use any other admitted exhibit.
- I. All exhibits that are marked for identification and shown to a witness, whether admitted or not, should be left on the corner of the judge's table after the attorney finishes examining the witness.

IX. OBJECTIONS

- A. One of the obligations of an attorney at trial is to make objections when the attorney believes that the question asked of a witness, or an item being offered into evidence is improper. One makes objections to bring the impropriety to the court's attention and to secure the court's agreement that the objection is well taken.
- B. Technically an objection can be made whenever the question asked or the item offered into evidence is not proper under the Mock Trial Rules of Evidence. But just as in the real courtroom, an attorney should give serious consideration before making the objection. A judge and/or jury (in this case the evaluators) may have a negative reaction to an attorney who makes objections when the question asked or the evidence offered is not of any significant consequence. A similar negative view can arise where an attorney makes numerous objections for this may unduly lengthen the trial or may be viewed as an unnecessary disruption to the other side's evidence presentation.

- C. Of course, the opposite is also true. An attorney must be prepared to object in order to prevent improper evidence from being received to protect the interest of the attorney's client. Well taken objections may, thus, enhance the attorney's presentation in the view of the judge and/or jury.
- D. A good rule of thumb to follow is that an attorney should make objections when needed, not simply because there is a basis to object.
- E. It is important that teams consider the fact that when the presiding judge and evaluators score a mock trial they will likely take the objections into consideration in making their evaluations. The nature, manner and frequency of objections can enhance or detract from the evaluation given to an individual attorney or to the team.
- F. To make an objection, the following steps should be used:
1. The attorney wishing to object should stand and state simply "Objection" or "Objection" with a short statement of the nature of the objection as demonstrated below.
 2. Note: Only the attorney who questions a witness on direct or cross examination may object to questions posed to that witness or to evidence offered by the opposing counsel.
 3. If the attorney does not state the basis for the objection or does not state the basis clearly, the judge may ask the reason for the objection. The attorney who made the objection must be prepared to clearly, succinctly and briefly state the reason for the objection.
 4. The presiding judge may then ask the other attorney to respond to the objection. The attorney whose question or proffered evidence is objected to must be prepared to clearly, succinctly and briefly defend their question or offered evidence.
 5. As examples: "The party admission exception permits the question" or "This is not hearsay because I am offering the testimony for the purpose of what the witness heard and not for the truth of what was said" or "The question is relevant because it seeks information about the witness' bias."
 6. The presiding judge will then decide to either sustain or overrule the objection. If the objection is overruled, the attorney asking the question or proffering the exhibit may continue. If the answer to a question was given before the objection, the presiding judge will allow the answer to remain on the record. If the objection is sustained, the question or proffered exhibit will be disallowed. If the answer to the question had already been given, the presiding judge will strike the answer. The judge may direct the "jury" to disregard the overruled information.
- G. Below are examples of standard forms of objections. Objections should be limited to those in Part C of this Handbook. Teams should NOT go beyond these materials. If

an opposing team violates these rules, this paragraph should be brought to the attention of the presiding judge. Judges and evaluators may deduct points for inappropriate objections.

1. Irrelevant evidence: “Objection. This testimony is irrelevant to the issues of this case,” or “Irrelevant.”
 2. Leading questions: “Objection. Counsel is leading the witness.” (This is only objectionable when done on direct examination.)
 3. Improper character testimony: “Objection. The witness’s character (or reputation) has not been put in issue.”
 4. Hearsay: “Objection. Counsel’s question/the witness’s answer is based on hearsay.”
 5. Opinion: “Objection. Counsel is asking the witness to give an opinion.” Keep in mind that witnesses may give opinions provided they have the personal knowledge and level of expertise to give such an opinion.
 6. Lack of Personal Knowledge: “Objection. The witness has no personal knowledge to answer the question.”
 7. Lack of Foundation: “Objection. No foundation has been laid to show that this witness is qualified to respond to that question.” or “Objection. No foundation has been laid for this exhibit.” This might arise, for example, if a witness is asked to testify to a fact, such as the color of a car, without first showing that the witness saw the car at some point, or if an expert is asked to give an opinion before his or her qualifications are established.
- H. NOTE: There is no “creation of material fact” objection. If an opposing team attempts to enter evidence, through questions on direct examination, teams are encouraged to object or discredit the witness on cross-examination. This does not permit teams to create facts. Creation of material facts may cause point deductions for the creating team.

X. GUIDELINES FOR STUDENTS ACTING AS TIMEKEEPERS

- A. One student from each team will be assigned the duty of keeping time during the trial. **No outside electronics will be allowed.** Stopwatches will be provided by the ISBA. The stopwatches will be collected at the end of each session. Time keeping forms will be provided at the trial location.
- B. Student timekeepers may be alternate team members, but timekeepers must be one of the ten (10) students on the Official Team Roster submitted to the Coordinator. As part of the ten (10) person roster, the student timekeeper is required to take the Law Test. Failure of the student timekeeper to take the Law Test will result in a score of zero (0) for that student on the Law Test, and will be factored into the teams overall

law test score. Timers for each team will be seated next to each other and should agree, within reason, to the times entered on the time sheet. The presiding judge will be the final arbiter if time disputes arise. One timekeeper may be used, if both sides agree prior to trial. Please remember, the timekeeper cannot be a teacher or attorney advisor. **At the end of the trial, the timekeepers must submit their time keeping record to the presiding judge who will share it with the evaluators.**

- C. Timekeepers should only stop timing for the swearing in of a witness, attorney objections, a judge's ruling on objections, bench conferences if any, or if instructed to do so by the judge.
- D. Timekeepers may use appropriate time props to indicate to team members how much time remains for presentations. Appropriate time props include cards that could be raised as unobtrusive notification, but do not include any method that creates a disruption in the trial (such as speaking, ringing bells, etc).
- E. Judges may allow teams to finish their presentations should they go over their time allowance. However, judges and evaluators will take into account a team's adherence to the time allowances in making their evaluations and points may be deducted.

ISBA MOCK TRIAL TIME SHEET – REVISED TO REFLECT TIME BLOCKS

Each trial must be limited to one hour. We have listed below a breakdown of how the trial should proceed. Violations of these time limitations may cause a deduction in scoring.

STOP TIMING ONLY FOR: WITNESSES BEING SWORN, OBJECTIONS, JUDGE’S RULINGS ON OBJECTIONS, BENCH CONFERENCES, IF ANY, OR IF TOLD TO STOP BY THE JUDGE.

EVALUATOR: _____

SCHOOL NAMES: _____ Plaintiff
_____ Defendant

P Opening Statement (3 minutes) _____
D Opening Statement (3 minutes) _____

P - Case in Chief

P Direct Examination of both witnesses (including optional re-direct) – 15 mins _____
D Cross Examination of both witnesses (including optional re-cross) - 11 mins _____

D - Case in Chief

D Direct Examination of both witnesses (including optional re-direct) - 15 mins _____
P Cross Examination of both witness (including optional re-cross) - 11 mins _____

Closings

P Closing Arguments (including optional rebuttal) - 5 minutes _____
D Closing Arguments - 4 minutes _____

Prosecution/Plaintiff gives opening statement first. Prosecution/Plaintiff gives closing argument first; the Prosecution/Plaintiff may reserve a portion of its closing 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.

Round off times to the nearest one half minute:
Examples: 3 minutes, 10 seconds = 3 minutes
4 minutes, 15 seconds = 4 1/2 minutes
2 minutes, 45 seconds = 3 minutes

AT THE CLOSE OF THE TRIAL, TIMEKEEPERS WILL SUBMIT THE TIME SHEET TO THE PRESIDING JUDGE WHO WILL SHARE IT WITH THE EVALUATORS.

XI. SAMPLE FORMS

Illinois State Bar Association High School Mock Trial Score Sheet

JUDGES AND EVALUATORS PLEASE NOTE:

Re-direct, re-cross and Plaintiff's rebuttal in closing are now allowed in this program, though not required.

Plaintiff _____ Defense _____

On a scale of 1-5, please rate the teams for all categories below, recording a score in each box provided. No fractions please.

1-Not effective 2-Fair 3-Good 4-Excellent 5-Outstanding

SCORING CHART		PLAINTIFF/PROSECUTION	DEFENSE/DEFENDANT
Opening Statement			
Plaintiff's 1st Witness	Direct & Redirect Exam by Atty (P)		
	Cross & Recross Exam by Atty (D)		
	Witness Performance (P)		
Plaintiff's 2nd Witness	Direct & Redirect Exam by Atty (P)		
	Cross & Recross Exam by Atty (D)		
	Witness Performance (P)		
Defendant's 1st Witness	Direct & Redirect Exam by Atty (D)		
	Cross & Recross Exam by Atty (P)		
	Witness Performance (D)		
Defendant's 2nd Witness	Direct & Redirect Exam by Atty (D)		
	Cross & Recross Exam by Atty (P)		
	Witness Performance (D)		
Closing Arguments & Plaintiff's Rebuttal			
General Team Presentation			
TOTAL POINTS			

I award this ballot to: _____ Prosecution _____ Defense

Nomination for Outstanding Attorney _____ P / D

Nomination for Outstanding Witness _____ P / D

Evaluator's Printed Name: _____

Evaluator's Signature: _____

Do not show scores to the students, teachers or guests. Please return all completed score sheets to the Mock Trial Coordinator at the conclusion of each trial.

**ISBA HIGH SCHOOL
MOCK TRIAL PROGRAM
JUDGE'S SCORESHEET**

Please indicate the school/team name for the:

Petitioner/Plaintiff/Prosecution: _____

Respondent/Defendant/Defense: _____

Please rate the teams using the following scale for overall achievement. Please do NOT use fractional points.

Points awarded may not exceed 45 for each team.

I AWARD THE PETITIONER TEAM _____ OVERALL ACHIEVEMENT POINTS.

I AWARD THE RESPONDENT TEAM _____ OVERALL ACHIEVEMENT POINTS.

1-9 Not effective

10-18 Fair

19-27 Good

28-36 Excellent

37-45 Outstanding

I award this ballot to:

_____ **Plaintiff Team**

_____ **Defense Team**

Nomination for OUTSTANDING ATTORNEY _____

Nomination for OUTSTANDING WITNESS _____

Judge's Signature _____

Thank you.

Explanation of the Performance Ratings Used on the Presiding Judge and Evaluator Mock Trial Score Sheets

Participants should be rated on a scale of 1-5, with five being the highest level of achievement. Remember, you are NOT scoring on the merits of the case; rather, you are scoring on student achievement, understanding, presentation, conduct, etc. Evaluators may individually consider penalties for violations of the mock trial rules. Penalties may reduce point awards in appropriate categories. Do not indicate separately any penalties you may give.

1-9 on Presiding Judge Scoresheet/1 on Evaluator Score sheet - Not Effective/Poor

Attorneys: Unsure of self, illogical, uninformed, not prepared, speaks incoherently, ineffective presentation of case materials, no strategy evident. Poor speaking voice, no eye contact, excessive use of notes. Questions irrelevant, leading or repetitive.

Witnesses: Witness presentation inadequate; reliance on reminders from lawyers. Witness uncooperative.

10-18 on Presiding Judge Scoresheet/2 on Evaluator Score sheet - Fair/Needs Improvement

Attorneys: Minimally informed and prepared. Performance is passable but lacks depth in terms of knowledge of appropriate tasks and materials. Communications lack clarity and conviction. Exhibits some case strategy. Questions somewhat irrelevant and often misleading. Minimal use or overuse of objections. Only fair response to objections from opposing counsel.

Witnesses: Witness exhibits fair understanding of affidavit and responds appropriately but needs assistance or seems to falter.

19-27 on Presiding Judge Scoresheet/3 on Evaluator Score sheet - Good

Attorneys: Good, solid, but less than spectacular performance. Logic and organization are adequate but could have been better. Grasps major aspects of the case, but does not convey mastery. Communications are clear and understandable, but could be more fluent and persuasive. Deals with objections adequately. Good control of witness. Questions not leading.

Witnesses: Witness exhibits good knowledge of role and tells story in coherent manner. Needs few reminders from lawyers. Good eye contact.

28-36 on Presiding Judge Scoresheet/4 on Evaluator Score sheet - Very Good/Excellent

Attorneys: Fluent, persuasive, clear and understandable. Organizes materials and thoughts well and exhibits mastery of case and materials. Asks suitable questions and follows through with appropriate questions on cross. Evidences a clear case strategy and controls the witnesses very well.

Witnesses: Excellent knowledge of role and good speaking voice. Answers were responsive. Answers questions from both sides appropriately. Believable; does not appear to be too staged.

37-45 on Presiding Judge Scoresheet/5 on Evaluator Score sheet - Outstanding

Attorneys: Superior in qualities listed for Excellent performance. Thinks well on feet, is logical, and keeps poise under duress. Can sort out the essential from the nonessential and use time effectively to accomplish major objectives. Demonstrates the unique ability to utilize all resources to emphasize vital points of the trial.

Witnesses: Exceptional knowledge of roles. Persuasive and believable. Responds effectively to questions from lawyers on both sides. Eye contact. Absolutely believable in role.

PART C. MOCK TRIAL RULES OF EVIDENCE

I. GENERALLY

- A. Rules of evidence regulate the admission of proof (i.e., testimonial or physical evidence). These rules ensure that parties receive a fair hearing and exclude any evidence deemed irrelevant, incompetent, untrustworthy or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection addressed to the presiding judge. The judge then decides whether the rule has been violated and whether the evidence (testimony or document) must be excluded.
- B. NOTE: Not every judge will interpret the rules of evidence in the same way. Students should be prepared to point out specific rules to which they may be referring or relying upon and argue for the interpretation and application of the rule they think proper. Regardless of how the judge rules, participants must accept the judge's ruling with grace and courtesy.

II. ADOPTION OF NATIONAL HIGH SCHOOL MOCK TRIAL RULES OF EVIDENCE

- A. **PLEASE NOTE: The Illinois High School Mock Trial Program uses the National High School Mock Trial Rules of Evidence, as follows.**



**ILLINOIS STATE
BAR ASSOCIATION**

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**NATIONAL HIGH SCHOOL MOCK TRIAL
CHAMPIONSHIP FEDERAL RULES OF EVIDENCE**

(Mock Trial Version)

(REVISED 11/1/15)

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NATIONAL HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP FEDERAL RULES OF EVIDENCE

(Mock Trial Version)

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. All teams are responsible for the conduct of persons associated with their teams throughout the mock trial event..

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 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

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 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; and
 - (e) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.
- (7) **Absence of 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) the opponent does not show that the possible source of information or other indicated a lack of trustworthiness.
- (8) **Public Records.** A record or statement of a public office if:
- (a) it sets out:
 - (i) the offices 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 personal; or
 - (iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and
 - (b) the opponent does not show that the source of information or 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 – NOT APPLICABLE

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.

Last Revision: 11/1/15