

**MINNESOTA HIGH SCHOOL MOCK TRIAL  
COMPETITION RULES  
2020-2021  
Approved 10/21/2020**

Any clarification of rules or case materials will be issued in writing to all participating teams no less than two weeks prior to the tournament.

Each team is responsible for the conduct of persons associated with the team throughout the mock trial competition.

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## **I. RULES OF THE COMPETITION**

### **A. ADMINISTRATION**

#### **Rule 1.1 Rules**

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

Rules with the “NHSMTC” designation appear in these rules only as notification to the team representing Minnesota at the National High School Mock Trial Championship (NHSMTC) that additional and different rules govern that tournament. (See Rule 1.3 for an example.) This designation does not imply that rules governing the NHSMTC govern this, the Minnesota Mock Trial Tournament, in any way.

Questions or interpretations of these rules are within the discretion of the Minnesota State Bar Association (MSBA), whose decision is final.

#### **Rule 1.2 Code of Conduct**

The rules of competition, as well as proper rules of courthouse and courtroom decorum and security, must be followed. Coaches, judges, spectators and students alike are expected to work with one another on a professional level at all times. The MSBA possesses discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct occurring while a team is participating in the mock trial program for flagrant rule violations or breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge or the mock trial program. In these rules, all references to “participating” includes any activity which is a part of the mock trial program in person or virtually.

Mock trial team coaches and other volunteers assisting a team need to be familiar with and comply with all relevant school rules regarding participation in co-curricular activities and interactions with students participating in such activities. Any communication between students and judges or other volunteers should take place within view of other adults or students.

#### **Rule 1.3 Emergencies (NHSMTC)**

#### **Rule 1.4 Student Timekeeper (NHSMTC)**

#### **Rule 1.5 Relationship to Other Laws; Accommodation of Disability**

These Rules will be interpreted and administered consistent with all applicable laws. Accordingly, should any applicable law require variance from these rules or accommodation of any competitor for any reason, including a legally recognized disability, that team member or their coach may apply to the Mock Trial Director for accommodation, and such reasonable accommodation as the law requires shall be granted. Where possible, teams competing against the team for which an accommodation was granted shall be informed of the accommodation in advance of a competition

round but will ordinarily not be informed of the specific nature of the issue that led to the accommodation.

## **B. THE PROBLEM**

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

The problem will be a fictional fact pattern which may contain any or all of the following: statement of facts, pleadings, indictment, stipulations, witness statements/affidavits, jury instructions, orders/rulings exhibits, etc. Stipulations may not be disputed at trial. Witness statements/affidavits and exhibits may not be altered.

The problem shall consist of three witnesses per side, all of whom shall have names and characteristics which would allow them to be played by a student of any gender. All three of the witnesses must be called.

The fact that information is contained in a statement of facts, indictment, witness statement/affidavit, or exhibit does not mean that the information is admissible or has been admitted into evidence. Proffers of evidence through the testimony of witnesses must be made and ruled upon during the course of the trial itself.

### **Rule 2.2 (and previously Rule 2.3) Witnesses Bound by Their Materials; Rule Against Unfair Extrapolations**

**The Prohibition:** Witnesses are bound by their Witness Materials and may not invent Material Facts that are not Reasonably Consistent with those materials. Such an invention is called an “Unfair Extrapolation.” Either a witness who unfairly extrapolates, or an attorney who invites a witness to unfairly extrapolate, are subject to having their score reduced at the scoring judges’ discretion.

#### **Definitions:**

“**Witness Materials**” includes the sworn affidavit or statement by the witness, as well as documents, reports or other exhibits prepared by the witness or relied upon by the witness. Normally it does not include affidavits or statements of other witnesses, unless the witness notes in their statement or affidavit that they relied on or considered other witness’ statement or affidavit.

“**Material Facts.**” If a fact stated in testimony by a witness does not, in the court’s discretion, appear to affect the strength, weakness or general outcome of a party’s case, then there has been no invention of a Material Fact, and no unfair extrapolation has occurred. For example, whether a witness testifies that they are a vegetarian probably does not affect the case unless vegetarianism is an issue in other parts of the fact pattern.

“**Reasonably Consistent.**” Facts stated in testimony by a witness which, in the court’s discretion, are Reasonably Consistent with the Witness Materials are not a violation of the rule. In assessing whether a witness’s testimony concerning a fact is Reasonably Consistent, the court should compare the testimony offered with the Witness Materials for purposes of consistency. The court should then consider whether the variation of the testimony from the

facts stated in the Witness Materials is material or is instead minor or can be reasonably inferred from the Witness Materials.

**Permitted Negative Inferences in Cross Examination:** While an attorney is not to invite Unfair Extrapolation in their questioning of a witness, not all cross-examination questions that ask for testimony as to facts not clearly contained within the Witness Materials call for Unfair Extrapolation. A cross examining attorney may ask a witness questions about things not contained in the witness materials, if it is reasonable to have expected the witness to have included that information in their Witness Materials. For example, it is reasonable for a cross examining attorney to question a police officer witness as to the officer’s lack of expertise with forensic science by asking “*You don’t have any special training in the examination of fingerprints, correct?*” if the Witness Materials do not have any mention of a such training.

**Procedure:** When an attorney assigned to examine or cross examine a witness believes that a witness has made an Unfair Extrapolation, or believes that an attorney has invited a witness to make an Unfair Extrapolation, an objection under Rule 2.2 may be made. The presiding judge may permit the parties to argue application of the Rule to the issue and then make a ruling. To the extent a scoring judge does not agree with a ruling by the presiding judge as to whether an Unfair Extrapolation occurred or was requested to be made, such scoring judge may reflect that in the judge’s scoring of the performance by the witness or attorney involved.

**Intent of the Rule:** Attorneys are encouraged, whenever feasible, to deal with Unfair Extrapolation by impeaching the offending witness rather than by objecting. It is not the intent of this rule to allow for extraneous or voluminous objection arguments about Unfair Extrapolation. Not every violation is intentional, and not every violation requires stopping the trial with an objection. Repeated, bad-faith objections under the Unfair Extrapolation Rule should not be rewarded. On the other hand, sometimes an objection may be required if an opponent’s unfair extrapolation is tailored take advantage of time limitations or overwhelm the other team with factual inventions that cannot be cured through impeachment alone.

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

All witnesses are intended to be gender neutral. Personal pronoun changes in witness statements indicating gender of the characters shall be deemed to have been made so as to conform to the gender or gender election of the student playing the witness. Any student may portray the role of any witness in accordance with the gender indicated in their team’s roster and make use of the preferred pronoun announced by the student’s team in their pretrial matters.

#### **Rule 2.5      Voir Dire**

Voir dire examination of a witness is not permitted.

### **C.      TEAMS**

#### **Rule 3.1      School and Student Eligibility**

The competition is open to students currently enrolled in grades seven through twelve in all Minnesota schools. Program information and registration forms are mailed to appropriate school personnel at the beginning of the school year.

To participate in the competition schools must return a completed entry form and registration fee for each team entered. Registration fees will not be refunded after October 30, 2020. **Registration forms and fees received after October 30, 2020 will not be guaranteed trials in the competition.**

A school may enter up to four teams in the competition. This limitation does not prevent a school from entering more than four teams in an invitational, scrimmage, or other event.

For schools with more students interested in participating than can be accommodated on the number of mock trial teams for which the school is eligible, there are various options:

- a. Hold tryouts for the mock trial team(s) and have the teacher coach (the attorney coach may also want to participate) select team members.
- b. Hold intraschool rounds to determine which students will represent the school in regional and state competition.
- c. Create “practice teams” comprised of less experienced members and allow only upper-class students to be on the school’s “official” teams.

Schools must follow the MSBA procedures for confirming their trial schedules or be disqualified from entering the competition the following year.

### **Rule 3.2 Team Composition**

Each team participating in a round is to consist of seven or **eight** primary members: three witnesses, three attorneys, and either student participating as a timekeeper and bailiff or a timekeeper and a bailiff. See Rule 4.1(A)4 for point deduction if a team has fewer than seven students to participate (three attorneys, three witnesses, and a timekeeper/bailiff). There is no limit to the total number of students who can be members of the team and a student need not participate in the same role in each round.

Once a student has participated in a scoring role on a team, that student cannot participate on another team in a scoring role for the remainder of the season.

A scoring role is defined as an attorney or witness that receives a score during a round.

Every team must be fully prepared to argue both sides of the case. Only one team from each school may be eligible to compete at the state tournament.

Teams should be advised that the team representing Minnesota at the National High School Mock Trial Championship must be comprised of a sufficient number of 9-12th grade students to comply with NHSMTTC Rules and that the team must comply with the requirements of Rule 5.9.

### **Rule 3.3 Team Presentation (NHSMTTC)**

### **Rule 3.4 Team Duties**

Team members are to evenly divide their duties. During pretrial matters the prosecution/plaintiff team shall ask the Presiding Judge to accept the Pretrial Stipulations and grant the motions therein. There shall be three attorneys and three witnesses. Each of the three attorneys will conduct one direct examination and one cross-examination; one of the three attorneys will present the opening

statement, another will present the closing argument and rebuttal, and if applicable, either/or the third attorney will handle the pretrial matters. [See Rule 4.5]

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

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

### **Rule 3.5 Team Roster**

Copies of a Team Roster must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams shall be identified by the side they are arguing and their school name. Before beginning a trial, the teams must exchange copies of their Team Roster. The roster should identify the gender of each witness so that references to such parties will be made in the proper gender. Copies of the Team Roster also should be given to the presiding and scoring judge before each round. A sample roster format is included at the end of the case.

## **D. THE TRIAL**

All trials will be governed by the "Simplified Rules of Evidence" contained in these materials. Other more complex rules may not be raised in the trial.

### **Rule 4.1 Courtroom Setting (2-5, Minnesota only)**

1. The Plaintiff/Prosecution team shall be seated closest to the jury box. If a team wants to rearrange the courtroom, the teacher coach must ensure that the courtroom is returned to its original arrangement before the team leaves the courtroom at the end of the trial.

2. Coaches must sit so they are behind the student attorneys (i.e., coaches should not be visible to the attorneys during their presentations).

3. All participants are expected to display proper courtroom behavior. The following rules should be observed in the courtroom at all times:

- a. Students should dress appropriately for a courtroom setting. (Suits are not required.) A student playing the part of a witness may wear clothing consistent with that witness' character, but may not wear a costume. [Refer to Rule 4.11 for rule about costumes.]
- b. Be courteous and respectful to witnesses, other attorneys, and the judge.
- c. Ask permission of the presiding judge to approach the judge or a witness unless otherwise instructed by the presiding judge.
- d. If you receive a ruling against your side on a point or on the case, accept the decision gracefully.

4. All participants and spectators are expected to display proper behavior in the courthouse. The following rules should be observed in the courthouse at all times. Any violation of these rules



(e.g., going into other parts of the courthouse) will be grounds for requesting that school to leave the courthouse.

- a. Each team must have an adult chaperone assigned to it while at the courthouse. The chaperone must remain with the team at all times, while the team is waiting for a trial to begin, competing in the courtroom, waiting for another team to finish competing, etc.
- b. All students must stay in the area of the courthouse where the competition is being held. Students will be allowed to use the restrooms which are nearest to the courtroom being used for competition.
- c. Teams should be advised that some courthouses prohibit cell phones on the premises. Courthouses do not have provisions to store them during trials and teams (including students, coaches and spectators) should be prepared to follow courthouse policy.
- d. Students may not have in their possession any food, beverage or gum (except water) while in the courtroom.
- e. Following completion of the trial, the coaches will inspect the area used for the competition, including the restrooms, to ensure that everything is left in the same condition in which it was found. ***Any furniture in the courtroom that was moved before or during the trial MUST be restored to its original configuration!***
- f. If requested to do so by the Court Administrator, the coaches will notify the administrator's office when their team arrives and when it leaves. The latter will provide an opportunity for the Court Administrator to arrange for an inspection of the area.

5. In order to avoid the appearance of impropriety or bias, coaches should not interact with the judges until after the trial.

#### **Rule 4.1(A) Pretrial Matters (Minnesota only)**

1. Teams are expected to be present in the courtroom fifteen minutes before the starting time of the trial. To assist in enforcing these rules, presiding judges, upon taking the bench before the start of the trial, will handle the following pre-trial matters:
  - a. Ask each side if it is ready for trial. Ask if each side has provided each of the judges and the opposing team with a copy of its team roster (a sample roster is provided in the back of these rules). The Judge will then ask each team to introduce its members.
  - b. If video recorders are present, the judge will remind the teams that the tape cannot be shared with any other team. (See Rule 4.14 for more on videotaping.)
  - c. The judge will remind all present in the courtroom of the rule prohibiting verbal or written communication between the team members and the coaches, spectators or anyone else throughout the trial round, including any recesses. (This is to be especially stressed in crowded court settings where there is close proximity between audience and teams.) Communication is allowed once the trial is complete. Judges should announce that the trial is complete, and communication is permitted.
  - d. The judge will ask if there are any pretrial matters

2. The judge will remind all present that the courtroom should be put back in order, all trash removed, and that no food or drink is allowed anywhere, at any time, by anyone, with the exception of water for teams pursuant to Rule 4.1(D) and judges.

3. Each team should provide a copy of its roster to the judges and the opposing team which includes the names of the students, the roles they will play, and for the witnesses, the gender of the witness being portrayed. When requested to make introductions, each member of a team will rise, state their name and the role they are playing. When requested to by the judge to present any other pretrial matters, the plaintiff/prosecution team shall request the judge to accept the Pretrial Stipulations (See Rule 3.4 and the Pretrial Stipulations at the end of the case materials) and may then bring any additional matters before the court appropriate as pretrial matters (including any preferred pronoun with respect to their witnesses). Following that, the defense shall present any of its own pre-trial matters.

4. The starting time of any trial will not be delayed for longer than ten minutes, except with the agreement of the teacher coaches for both teams or as determined by the presiding judge. Incomplete teams may proceed with the trial by having one or more members play up to two roles. Incomplete teams will be assigned a two (2) point deduction by each judge for each missing attorney, witness or timekeeper. Teams missing a bailiff will not be assigned a point deduction.

5. All team members must remain in the courtroom during the entire trial. During a formal recess called by the judge, team members may leave the courtroom but should not communicate with anyone other than their student team members.

#### **Rule 4.1(B) Rescheduling of Rounds (Minnesota only)**

1. Once a trial has been scheduled, the trial will not be rescheduled due to the absence of a team member or illness, unless approved by the Mock Trial Director. Teams should include alternates to replace absent members. Cancellation and rescheduling of trials due to inclement weather conditions will be at the discretion of the Mock Trial Director (with particular attention to the distance teams may need to travel to reach their scheduled trial). While cancellation by a school of classes or after school activities will be considered by the Mock Trial Director, such cancellation does not prevent the assessment of a forfeit against the team not allowed by its school to participate in the event the Mock Trial Director deems the affected team as not having reasonably cooperated with efforts to reschedule the canceled trial.

2. The Mock Trial Director shall have broad discretion in the rescheduling of cancelled trial, including the reallocation of scheduled opponents and the use-of alternative venues for the trial and of holding of virtual trials as contemplated by Rule 4.1(C).

#### **Rule 4.1(C) Establishment of Rounds to be Held Virtually (Minnesota only)**

The Mock Trial Director shall have broad discretion to schedule trials to be held via video conferencing or by other on-line means. Such discretion will include the adoption of procedures and modifications to these Competition Rules to adapt them for application to a round being held virtually rather than in-person.

#### **Rule 4.2 Stipulations**

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

### **Rule 4.3 Reading Into The Record Not Permitted**

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

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

The following oath may be used before questioning begins:

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

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

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)
2. Direct and Redirect (optional) Examination (25 minutes per side)
3. Cross and Re-cross (optional) Examination (18 minutes per side)
4. Preparation for closing argument (2 minutes)
5. Closing Argument and Rebuttal (7 minutes per side) *(up to three minutes of time not used by the prosecution/plaintiff attorney will automatically be reserved for rebuttal; however, a rebuttal is not required).*
6. Team Conference (2 minutes)

The Prosecution/Plaintiff gives the opening statement and the closing argument first.

The Plaintiff’s Opening Statement must be given at the beginning of the trial. The Defense may choose to postpone its Opening Statement until after the conclusion of the Plaintiff’s case-in-chief.

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.

If no time remains for a cross examination of a witness and the Court does not elect under Rule 4.7 to grant an extension of time for cross examination of the witness, no points shall be awarded to the attorney assigned to cross examine the witness and the witness who is not cross examined shall be awarded the same points as given for their direct examination.

### **Rule 4.6 Timekeeping**

Time limits are mandatory and will be enforced. Each team is required to have its own timekeeper and timekeeping aids. At a minimum, Timekeepers may use: 7:00; 6:00; 5:00; 4:00; 3:00; 2:00; 1:00; :45; :30; :15; STOP as the increments for their timecards, but may use additional cards in full minute increments larger than 7:00. Teams are not permitted to use the cards to signal time remaining other than the aggregate time remaining for the team’s direct or cross examinations, opening statement and closing argument (thus, a team may not use the cards to show time remaining for time the team has allocated to a particular segment of the trial).

Unless prohibited by the rules of the venue, electronic devices (including cellphones) may be used for timekeeping.

Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements.

Time does not stop for introduction of exhibits. If at any point during the trial time expires any timekeeper should say “stop” aloud for the court and parties to hear at the point of time expiration. Failure of a timekeeper to say “stop” aloud for the court and parties to hear will be considered a waiver of the time violation.

Every effort should be made to respect the time limits. Judges will be asked to use their scores to reflect a team's ability to adhere to the time guidelines. Perceived time violations are an issue which generates much controversy every year during the Mock Trial Competition. Due to the nature of the event and in the interest of keeping the competition good-spirited, teams are urged to adhere to the time limits indicated and to give their opponents the benefit of the doubt if minor infractions occur. Timekeepers are encouraged to confer following completion of the examination of each witness as to the direct and cross examination time remaining

Timekeepers are encouraged to confer following completion of the examination of each witness as to the direct and cross examination time remaining.

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

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the presiding judge should request that the student stop his/her presentation. Scoring judges shall determine individually whether or not to discount points in a category because of over-runs in time.

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

Motions which defeat the purpose of the trials (such as those to dismiss or to sequester or motions in *limine*) will not be allowed.

#### **Rule 4.9 Sequestration**

Teams may not invoke the rule of sequestration. All witnesses are to be presumed to have been present during the trial and thus would have been present during testimony of all other witnesses.

#### **Rule 4.10 No Bench Conferences**

All matters should be handled in open court, without bench conferences.

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

Teams may refer only to materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case packet. Absolutely no props or costumes are permitted unless authorized specifically in the case materials. Costuming is defined as hairstyles, clothing, accessories, and makeup which are case specific.

The only documents which the teams may present to the presiding or scoring judges are the team roster forms and the individual exhibits as they are introduced into evidence. Exhibit notebooks are not to be provided.

Each team may laminate and enlarge one (1) exhibit to a maximum size of 24 by 36 inches. There can be no other enhancement of the exhibits (e.g., color, additional words), but they can be mounted on poster board or foam core in order to allow them to be handled more easily.

No other chalkboards, posters or other visual aids are permitted during the trial, except that during closing arguments a flip chart or other paper (e.g. newsprint) with hand lettering or hand drawing may be used. A flip chart or other paper (e.g. newsprint) with hand lettering or hand drawing may be prepared either prior to or during the trial. Students may write on their own or the other team's demonstrative tools so long as it is not destructive. Once admitted, multiple exhibits may be placed upon a single poster board or foam core board for display. During closing arguments, an attorney may make use of admitted exhibits in their argument.

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

Instructors, alternates and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any emergency recess which may occur. Signaling of time by the teams' timekeepers shall not be considered a violation of this rule.

Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar. Attorneys and witnesses may communicate with each other during the trial, but may not signal witnesses on the stand. Attorneys may consult with each other at counsel table verbally or through the use of notes. During the permitted conference at the close of the trial regarding rules infractions, all team members (witnesses, attorneys, and bailiff and timekeeper) may communicate with each other. No disruptive communication is allowed.

#### **Rule 4.13 Scouting and Viewing of Trials**

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

Everyone attending a trial should be reminded that appropriate courtroom decorum and behavior must be observed and that absolutely no food or drink is permitted in the courtroom.

#### **Rule 4.14 Electronic Recording**

Electronic recording, whether visual or audio, can be an effective teaching tool, but only a representative of a team competing in the trial may record the trial. A representative may record only upon motion made to the presiding judge, who shall grant the motion if:

1. Courthouse policy does not prohibit electronic recording.
2. There is no objection by the other team or any judge.
3. The recording does not distract the participants or otherwise disrupt the trial.
4. The recording will be used only by the team and will not be shared with any other team (even from the same school) or used for purposes of "scouting."

## **Rule 4.15                      Jury Trial**

The case will be tried to a jury; opening statements and closing arguments are to be made to the jury. Teams shall address the scoring judges as the jury.

At the discretion of the judges, the scoring judge(s) (excluding the presiding judge) may sit in the jury box closest to the witness stand. If timekeepers, bailiffs or witnesses are present in the witness box, they should be seated in front of the scoring judge(s).

## **Rule 4.16            Standing During Trial**

Unless excused by the judge, attorneys will stand while giving opening and closing statements, during direct and cross examinations, and for all objections.

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

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

If a team believes an objection would have been proper during the opposing team's opening statement or closing argument, one of its attorneys may, following the opening statement or closing argument, stand to be recognized by the judge and may say, "If I had been permitted to object during closing arguments, I would have objected to the opposing team's statement that \_\_\_\_\_." The presiding judge will not rule on this "objection," but all of the judges will weigh the "objection" individually and use their scores to reflect whether they believe a rules violation has occurred. A brief response by the opposing team will be heard under the presiding judge's discretion.

## **Rule 4.18            Objections**

The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge should ask the reason for it. Then the judge should allow the attorney who asked the question to explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether a rule of evidence has been violated ("objection sustained"), or whether to allow the question or answer to remain on the trial record ("objection overruled").

**1. Argumentative Question:** An attorney shall not ask argumentative questions, i.e. one that asks the witness to agree to a conclusion drawn by the questioner without eliciting testimony as to new facts. The court, however, in its discretion, may allow limited use of argumentative questions on cross-exam.

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

**3. Badgering the Witness:** An attorney may not harass or continue to annoy/aggravate a witness.

**4. Beyond the Scope:** Refer to Rule 611(b); applies only to redirect & re-cross.

**5. Character Evidence:** Refer to Rule 608.

**6. Hearsay:** Refer to Mock Trial Rules of Evidence, Article VIII for an explanation of hearsay and the exceptions allowed for purposes of mock trial competition.

**7. Irrelevant:** Refer to Article IV.

**8. Lack of Personal Knowledge:** A witness may not testify on any matter of which the witness has no personal knowledge. (See Rule 602, Article VI)

**9. Lack of Proper Predicate/Foundation:** Attorneys shall lay a proper foundation prior to moving the admission of evidence. The basic idea is that before a witness can testify to anything important, it must be shown that the testimony rests on adequate foundation. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.

**10. Lack of Qualification of the Witness as an Expert:** See Rule 702.

**11. Leading Question:** Refer to Rule 611(c).

**12. Non-Responsive Answer:** A witness' answer is objectionable if it fails to respond to the question asked.

**13. Opinion on Ultimate Issue:** Refer to Rule 704.

**14. Question Calling for Narrative or General Answer:** Questions must be stated so as to call for a specific answer. (Example of improper question: "Tell us what you know about this case.")

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

**16. Speculation:** A witness' testimony should be based on the facts and issues of the case being argued. An attorney shall not ask a question which allows the witness to make suppositions based on hypothetical situations.

**17. Unfair Extrapolation:** Refer to explanation in Rule 2.2.

**Note:** Certain of the foregoing objections are not based on the Minnesota Mock Trial Competition Rules of Evidence and teams are not precluded from raising additional objections which may be available under such rules.

**Rule 4.19**      **Reserved.**

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

As an example only, the following steps effectively introduce evidence:

1. All evidence will be pre-marked as exhibits.
2. Your Honor, let the record reflect I am showing Exhibit No. \_\_\_ to opposing counsel.
3. Ask for permission to approach the witness. Give the exhibit to the witness.
4. "I now hand you what has been marked as Exhibit No. \_\_\_ for identification."
5. Ask the witness to identify the exhibit. "Would you identify it please?"
6. Witness answers with identification only.
7. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. \_\_\_ into evidence at this time. The authenticity of this exhibit has been stipulated."

8. Court: “Is there an objection?” (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
9. Opposing Counsel: “No, your Honor”, or “Yes, your Honor.” If the response is “yes”, the objection will be stated on the record. Court: “Is there any response to the objection?”
10. Court: “Exhibit No. \_\_\_ is/is not admitted.”

**Witness affidavits may be used to impeach or refresh recollection and when used for those purposes, need not be admitted into evidence.**

#### **Rule 4.21 Standards of Judging and Use of Notes**

The standards for judging are contained in the MSBA Mock Trial Performance Rating Standards. Witnesses are not permitted to use notes while testifying during the trial; any use of notes is subject to an appropriate point deduction. Attorneys may use notes, but, to the extent such as detracts from the overall performance, the scores may so reflect.

#### **Rule 4.22 Redirect/Re-cross**

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

#### **Rule 4.23 Scope of Closing Arguments**

Closing Arguments must be based on the actual evidence and testimony presented during the trial. Rebuttal shall not exceed the scope of the defense closing argument.

##### **Rule 4.23.1 Team Conference (Minnesota Only)**

At the conclusion of final arguments, the presiding judge will allow time (approximately two minutes) for the three student attorneys, three witnesses, bailiff and timekeeper to confer. The purpose of this team conference is to give the team members the opportunity to select the students from the opposing team they believed performed as the best attorney and the best witness and a chance to discuss among themselves whether they believe any significant rules violations occurred during the trial of which the judges could not be aware.

After the allotted time, the presiding judge will ask the teams to indicate their selection of best attorney and best witness. The presiding judge will then ask if either team wishes to report any significant rules violations. If a team feels point deductions should be assessed against the opposing team, one attorney from the team will have two minutes to explain why point deductions should be assessed. Following this explanation, one attorney from the opposing team will have two minutes to explain why point deductions should not be assessed. Further discussion will be limited to five minutes total, at which time the judges will decide individually about making any point deductions on their score sheets. The amount of such point deductions, if any, is at the discretion of each individual judge. **These decisions (about point deductions) are final!**

Of course the judges may, at their discretion, award point deductions for a rules violation regardless of whether the opposing team brings a rules violation to the attention of the judges.



If the presiding judge fails to ask the teams if they wish to ask for point deductions, and one or both teams wish to do so, it must be brought to the attention of the judge at this time.

#### **Rule 4.24 The Critique and Decisions**

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

Judging shall be based on the quality of the teams' performances, i.e., the nature/success of the team's strategy, the students' level of preparedness, the individual student performances, etc.. Judging shall not be based on the merits of the case. The total points awarded to each team by each judge will be added together; the team with the higher point total will be considered the winning team. **The team that wins on its performance is considered the winner of the trial for mock trial purposes.**

#### **Rule 4.25 Offers of Proof**

No offers of proof may be requested or tendered.

### **E. JUDGING AND TEAM ADVANCEMENT**

#### **Rule 5.1 Finality of Decisions**

All decisions of the judging panel are **FINAL**. The only exception is when there is a computational error in the math on a judge's score sheet. In the event of a mathematical error, the trial will be awarded to the team with the higher number of ACTUAL ballots or points as determined by the corrected math, even if this result is different than the one announced to the teams by the judge(s).

**PLEASE NOTE:** Many trial lawyers say that trial is an art and not a science. Thus, as beauty is in the eye of the beholder, trial performance may also lie in the eye of the beholder. This competition makes every effort possible to establish objective criteria by which student competitors are to be evaluated. However, it is a fact of life that not every attorney will evaluate a competitor the same. It is also true that not every juror will evaluate an attorney and his or her case the same. Thus trial competitions are very similar to real trials and the tournament could not progress without the selection of winners. We have therefore developed a rather detailed scoring process for the judges to use. Once the scoring process is complete, the decision of the judge(s) is final, as long as the team's scores have been added correctly.

It is also true that judges will often make different rulings on motions and objections during trial. That is true in real life as well. It is an inherent part of the trial system based on judges' discretion. Therefore, as in real life, the rulings of the trial judge are final, even if you disagree.

This competition is intended to not only teach students about how the legal system functions, but also to provoke thought about the issues involved. We encourage instructors to use this packet as a vehicle for education toward both goals.

#### **Rule 5.2 Composition of Judging Panels (Minnesota only)**

Every effort is made to have two volunteer judges for sub-regional trials and three judges for the regional finals. One judge will be designated to preside.

In a trial with two judges the presiding judge will also act as a scoring judge and complete a score sheet, and the team with the most total points wins the trial. If the total of the two judges' scores is a tie, the team with the most points on the presiding judge's score sheet wins the trial. Should a sub-regional trial have three judges, the presiding judge is encouraged to complete a score sheet for use in breaking a tie, but that score sheet is **not** to be counted for purposes of establishing the points awarded to the teams.

In a regional final trial with three judges the presiding judge will complete a score sheet. The team that wins at least two of the score sheets wins the regional final trial.

In a trial with only one judge, the winning team's points will be doubled.

### **Rule 5.3      Score Sheets/Ballots (NHSMTC)**

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

Score sheets are to be completed individually by each judge without consultation with the other judges. Each scoring judge shall record a number of points (1-10) for each presentation of the trial. At the end of the trial, each judge shall total the sum of each team's individual point and place this sum in the Column Totals box. The Mock Trial Director has the authority to correct any mathematical errors on score sheets. Mathematical errors not brought to the Director's attention within 24 hours of the trial are waived.

### **Rule 5.5      Contest Format/Team Advancement (Minnesota only)**

In the Minnesota competition there are three phases: sub-regionals (Rounds 1, 2, 3, & 4), regional championship, and the state tournament.

**Team attendance is expected at all trials in each phase of the competition for which the team is eligible.**

1. Invitationals: Participation in Mock Trial Invitationals, camps and other non-MSBA Mock Trial related events is encouraged by the MSBA. The MSBA's Mock Trial website is available to serve as a place for such events to be publicized, however the MSBA and its Mock Trial program does not specifically endorse such events. The MSBA encourages such events to include teams/individuals from schools across Minnesota and also encourages organizations hosting these events to establish subsidies to enable all teams/individuals who are interested in attending to do so.

2. Sub-regionals: For mock trial purposes, the state will be divided into regions. The exact number of teams assigned to regions will be determined by the number of teams entered in the competition and travel distances to the site of the competitions. Teams from the same school shall be assigned to the same regions. Teams in Greater Minnesota (the "Outstate Teams") will be assigned to regions, subject to the discretion of the Mock Trial Director to establish a "Super" Outstate Region. Teams in the Minneapolis-St. Paul metropolitan area (the "Metro Teams") will be assigned to compete at sub-regional competitions held either at the Hennepin County Courthouse (the "HCC Teams") or the Ramsey County Courthouse (the "RCC Teams" and collectively with the Super Outstate Regional teams and the HCC Teams, the "Super Region Teams") with teams from the same school to compete at the same courthouse. The MSBA will allocate the number of regional championships for the Metro Teams based on the relative number

of HCC Teams and RCC Teams. Outstate Teams assigned to a Super Outstate Region will have two regional championships assigned to that Super Outstate Region.

All teams shall compete in four sub-regional trials (Rounds 1, 2, 3, & 4). The MSBA will make every effort to avoid byes so that each team argues both sides of the case twice in the sub-regionals.

The MSBA shall set the trial schedule and determine which teams compete against each other and the sides of the case assigned. The fact that a team has scrimmaged another team will not preclude the same two teams from facing each other in competition. Teams from the same school may compete against each other.

*(The following will be used on a pilot basis in the 2020-2021 season)* The schedule for the first two rounds for Metro Teams and the schedule for all four rounds for the Outstate Teams will be established and announced prior to the commencement of the sub-regionals. The final two rounds for Metro Teams will be established and announced after the completion of the first two rounds. The pairings for the third round for Metro Teams will involve use of procedures similar to those used in the power-matching after two rounds in the State Tournament under subsection 4 below. Pairings for the fourth round for Metro Teams will involve pairings of teams that had no wins in the first two rounds being paired with each other and if there is an odd number of teams with the 0/2 record, the team with a 1/1 record with the lowest ranking (based on scoresheets won and cumulative point differential) will be added to that grouping. The pairings for the fourth round for the remaining Metro Teams will be based on the results after the first two rounds with the highest ranked 2/0 team facing the lowest ranked 1/1 team.

3. Regional Finals: After completion of the sub-regional competition, teams will be ranked based first upon win-loss record; second on scoresheets won; third based upon the cumulative point differential scores; fourth based upon cumulative points earned. [Note: A team's point differential score is the total point spread between that team's score and its opponent's score in a given trial. For example, if team A scores 95 points in a trial and its opponent, team B, scores 92 points, then team A will have an adjusted score of plus 3 and team B will have an adjusted score of minus 3.]

Non-Super Region Teams ranked first and second after the sub-regionals will compete in a regional championship round.

Super Region Teams will be paired to compete in a regional championship round with the number of HCC Teams and the number of RCC Teams to be selected being twice the number of regional champions allocated under Rule 5.5(2) to HCC Teams or RCC Teams, as applicable, and with the number of Super Outstate Regional teams being the first through fourth teams after the sub-regionals. Only the top two ranked teams from a single school will be considered for purposes of pairings for regional championships and to the extent two teams from the same school are ranked to compete in a regional championship, they shall be assigned to face each other. Other regional championship pairings will be power matched.

Sides for regional championships will be assigned in advance by a coin flip by an MSBA representative as provided in Rule 5.5(5); however, teams with a 3-1 record will be assigned the side on which they *lost* in sub-regional rounds unless this would result in the same pairing/sides as a trial in a sub-regional round in which case the teams will switch sides (so, if it was Liberty Blue v. City Green in Round 2, and power-matching would result in the exact same pairing in regional championship, the teams would switch sides).

4. State Tournament: Each regional champion is eligible to attend the state competition. If a regional champion decides it does not want to attend the state tournament, the second-place team will be eligible to compete. The state tournament format differs from that of the regional competition. There will be no selection by teams of the outstanding attorney and outstanding witness performance by members of the other team under Rule 4.23.1 and there will be no critique from the judging panel under Rule 4.24. All teams at the state tournament will participate in at least three rounds of trials and will present each side of the case at least once. After each round of competition a designee of the Mock Trial Advisory Committee will review the power-matching results and ensure that the trial pairings are correct. The power-matching system is subject to human error. The final results of power-matching cannot be appealed. The Mock Trial Advisory Committee has final authority to interpret these rules.

Every effort will be made to have three volunteer judges for each of the first three rounds of the State Tournament with one of the judges designated to preside. Each of the judges, including the scoring judge, will complete a score sheet. The team that wins two score sheets will be deemed the winning team of the round. If there are only two judges, the scoring judge's and presiding judge's scoresheet will be averaged to create a third scoresheet; if that averaged scoresheet results in a tie score, the team receiving the higher score on the presiding judge's scoresheet will be deemed the recipient of the higher score on the averaged scoresheet.

Pairings for the first round will be assigned by a random method at the Coaches Meeting prior to round one. After round one of the competition, teams will be divided into two brackets (1-0 and 0-1). Teams will be ranked within the brackets and power matched. Teams will switch sides in the second round from that they were assigned in round one if both teams can do so; if not, sides will be determined by coin flip by MSBA representative as soon as possible after pairings are established using the protocol in Rule 5.5(5).

State Finals Power-matching criteria for the second and third rounds are: 1) Win/loss record (the team receiving the most winning scoresheets in a trial shall be deemed the winner of the trial regardless of the number of points earned by each team), 2) total number of scoresheets won, 3) cumulative point differential, 4) cumulative points earned.

After round two of the competition, teams will be divided into three brackets (2-0, 1-1, and 0-2). Teams will be ranked within the brackets and power matched. If a team has not performed a side of the case in the first two rounds, it will be assigned that side in round three, if both teams can do so; if not, sides will be determined by coin flip by MSBA representative as soon as possible after pairings are established using the protocol in Rule 5.5(5).

After three rounds of competition, final championship trial participants will be the two teams that are 3-0 and will compete in the final championship round. If both teams have performed different sides of the case twice in the three rounds of competition, each will be assigned the side they performed only once and if a team in the final championship round has not performed a side of the case in the first three rounds, it will be assigned that side in the championship round, if both teams can do so; if not, sides will be determined by coin flip in connection with the announcement of the final championship round teams using the protocol in Rule 5.5(5).

The judging panel for the championship round will consist of a presiding judge, who will not render a selection as to the winning team, and a panel consisting of an odd number of "scoring judges" who may each complete a scoring sheet that is the same as is used in the regional competition for determination of their selection of the winning team. The results of determination

of winning teams by the members of the scoring panel and any score sheets any scoring judge elects to use from the championship round will be kept confidential.

Subject to the provisions of Rule 5.9 the state champion is then eligible to represent Minnesota at the annual National High School Mock Trial Championship, which is held in a different city each year. (2020 Evansville, IN). Placement of the remaining fourteen teams competing in the state tournament will be based upon the following criteria: 1) Win/loss record, 2) Total number of scoresheets won, 3) Number of wins against 2-1 teams, 4) Number of wins against 1-2 teams, 5) Cumulative point differential. Provided that, if by application of the criteria a team is ranked higher than a team with the same win/loss record that defeated it, the losing team shall be placed immediately below the winning team.

5. Coin Flips: For the purpose of allocation of sides to be determined by a coin flip, the coin will be flipped and if it is heads the school with a name appearing earlier in the alphabet will be the plaintiff/prosecution and if the coin is tails such school will be defense. For example, if River City Blue is facing River City Green, and the coin comes up heads, River City Blue will be assigned plaintiff/prosecution and River City Green will be assigned defense.

**Rule 5.6 Power Matching/Seeding** (NHSMTTC Only; see Rule 5.5(3) for MN version)

**Rule 5.7 Selection of Sides For Championship Round** (NHSMTTC)

**Rule 5.8 Effect of Bye Round**

A team that prevails by forfeit or receives a bye will be awarded a win and be credited with being deemed recipient of higher score on two scoresheets along with a cumulative point differential and cumulative points that equal the average (mean) cumulative point differential and average (mean) cumulative points of all regional rounds for the prior school year. A team that prevails by forfeit over another team from the same school will receive a cumulative point differential of zero and cumulative points of zero. [Note: for 2020-21, the cumulative point differential is 16 and the cumulative points are 202.]

**Rule 5.9 Representing MN at the National High School Mock Trial Championship**

NHSMTTC Rule 3.1 requires teams competing at the National High School Mock Trial Championship to be comprised of students who participated on the current state championship team. If one or more participants on the team representing Minnesota at the National Championship is unable to compete, there may be opportunities' under the NHSMTTC Rules for the addition of students to the team.

If the state championship team desires to represent Minnesota at the National Championship, the members of the team and its coaches shall meet with individuals selected by the Mock Trial Director and of the Chair of the Advisory Committee (the "Nationals Advisory Sub-Committee") within two weeks following the conclusion of the State Tournament to discuss the team's roster of participants (which must comply with NHSMTTC Rule 3.1) and the expectations and obligations associated with representing the Minnesota High School Mock Trial program at the National Championship. Such expectations and obligations involve preparing to compete and gaining familiarity with the rules of competition and evidence used at the National Championship on an expedited basis. Each of the team members and coaches will be expected to sign written

acknowledgments of their understanding of the obligations and that they are committed to perform those obligations to the best of their abilities.

If as a result of such meeting, the Nationals Advisory Sub-Committee concludes the state championship team may lack sufficient members who can attend the National Championship and make the necessary commitments, the Sub-Committee may recommend to the Advisory Committee to find the state championship team unable to compete and, in compliance with NHSMTTC Rule 3.1, designate an alternate team from the state competition to represent Minnesota.

The Team representing Minnesota shall be prepared by mid-April to conduct at least three scrimmages within the team or with teams from surrounding states with members of the National Advisory Sub-Committee in attendance for the provision of recommendations and suggestions.

## **F. DISPUTE RESOLUTION**

### **Rule 6.1 Alleging a Rules Violation/Following a Conclusion of a Trial**

In accordance with Rule 4.23.1, allegations of a violation of the rules must be brought to the attention of the presiding judge at the conclusion of the trial.

At no time in this process may coaches or other members of the team not participating in the round communicate or consult with the student participating in the round. Only student attorneys may invoke the dispute procedure.

### **Rule 6.2 Complaint/Grievance Process:**

1. If unprofessional conduct, unethical behavior, or rules violation of a serious and substantial nature (collectively, “Serious Misconduct”) occurs outside of a trial, or occurs in a trial but could not reasonably have been identified and decided during trial (including pursuant to Rule 4.23.1), a grievance may be filed with the Mock Trial Director by any team member, teacher, attorney coach, judge, or member of the Mock Trial Advisory Committee. Serious Misconduct does not include decisions within a judge’s discretion, including, but not limited to, rulings on objections or points awarded. Concerns on matters on which a grievance cannot be filed shall be directed to the Mock Trial Director.

2. Grievances must be in writing, specific, and be submitted within 48 hours of the time the grievant knows or reasonably should have known of the Misconduct.

3. Grievances shall be responded to by the Mock Trial Director with involvement of members of the Rules Subcommittee of the Advisory Committee.

4. The response to the grievance may involve: (i) provision of a copy of the grievance to relevant parties, (ii) invitation for submission of written responses; and (iii) such additional investigation as is deemed appropriate.

5. The disposition of the grievance in order of increasing severity includes:

- a. Dismissal of the grievance as unsupported or not involving a violation.  
Determination that the grievance has merit, but does not warrant the taking of any action.
- b. With the approval of the Advisory Committee, issue a warning by private conversation with the offending parties.

- c. With the approval of the Advisory Committee, issue a reprimand by letter to the offending parties. In the discretion of the Chair of the Advisory Committee the letter may be sent to other individuals, schools, or employers.
- d. With the approval of the Advisory Committee, issue a suspension precluding individuals or teams from participation in mock trial for a specified time period.
- e. With the approval of the Advisory Committee, issue a disqualification precluding individuals or teams from participation in mock trial for no less than one competition season.

6. The grievance process shall not involve any changing of the outcome of any trial or the calling for a retrial. The judges' decision is final. See Rule 5.1.

7. All parties shall be notified of the Rules Subcommittee's recommendation to the Advisory Committee. Any party may object to the recommendation in writing.

8. No legal or vested right is created by this process.

#### **Rule 6.2.1 Unsolicited Communication between Coaches and Judges**

Unsolicited communication between coaches and judges is strictly prohibited. Judges may file a grievance against a coach that s/he believes has violated this rule. The grievance must be filed within 48 hours of the alleged communication. The grievance process will be governed by the guidelines set forth in Rule 6.2 Complaint/Grievance.

Refer to Rule 4.23.1 for dealing with student team members' concerns about rules violation.

#### **Rule 6.3 Effect of Violation on Score (NHSMTC)**

#### **Rule 6.4 Reporting of Rules Violation/Outside the Bar (NHSMTC)**

## MINNESOTA MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

In American trials complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence will probably be allowed by the judge. The burden is on the mock trial team to know the Minnesota 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 the 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 Minnesota High School Mock Trial Rules of Evidence govern the Minnesota High School Mock Trial Program.

The fact that information is contained in a statement of facts, indictment, witness statement/affidavit, or exhibit does not mean that the information is admissible or has been admitted into evidence. Proffers of evidence must be made and ruled upon during the course of the trial itself.

### **Article I. General Provisions**

#### **Rule 101. Scope**

These Minnesota High School Mock Trial Rules of Evidence govern the trial proceedings of the Minnesota High School Mock Trial Program.

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

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

### **Article II. Judicial Notice**

#### **Rule 201. Judicial Notice**

1. This rule governs only judicial notice of adjudicative facts.



2. A judicially noticed fact must be one not subject to reasonable dispute in that it is either
  - a. Generally known within the territorial jurisdiction of the trial court or
  - b. Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
3. A judge or court shall take judicial notice if requested by a party and supplied with the necessary information.
4. Judicial notice may be taken at any stage of the proceeding.
5. In a civil action or proceeding, the judge shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the judge shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

### **Article III. Reserved**

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

#### **Rule 401. Definition of “Relevant Evidence”**

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

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

All relevant evidence is admissible, except as otherwise provided in these Rules. Irrelevant evidence is not admissible.

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

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

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

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

- (1) Character of accused -- Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;
- (2) Character of victim -- Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait

of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;

(3) Character of witness -- Evidence of the character of a witness as provided in Rules 607-609.

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

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

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

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

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

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

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

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the 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, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment.

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

(a) Prohibited uses. Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior consistent state or contradiction:

- (1) Furnishing or offering or promising to furnish—or accepting or offering or promising to accept—a valuable consideration in compromising or attempting to compromise the claim; and
- (2) Conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a

public office or agency in the exercise of regulatory, investigative, or enforcement authority.

(b) Permitted uses. This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness's bias or prejudice; negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or prosecution.

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

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

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

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

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

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

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

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

## **Article V. Privileges**

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

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

1. Communications between husband and wife;
2. Communications between attorney and client;
3. Communications among grand jurors;
4. Secrets of state; and
5. Communications between psychiatrist and patient.

## **Article VI. Witnesses**

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

Every person is competent to be a witness.

### **Rule 602. Lack of Personal Knowledge**

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

### **Rule 607. Who may Impeach (i.e., show that a witness should not be believed)**

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

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

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

- (1) The evidence may refer only to character for truthfulness or untruthfulness, and
- (2) Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.

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

- (1) Concerning the witness' character for truthfulness or untruthfulness, or
- (2) Concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

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

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

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

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

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

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

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

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

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

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

1. Make the *questioning* and presentation effective for ascertaining the truth,
2. Avoid needless *use* of time, and
3. Protect witnesses from harassment or undue embarrassment.

(b) Scope of cross examination. The scope of cross examination shall *not* be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material & admissible.

(c) Leading questions. Leading questions should not be used on direct examination of a witness (except as may be necessary to develop the witness' testimony). Ordinarily, leading questions are permitted on cross examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.

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

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

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

### **Rule 613. Prior Statements of Witnesses**

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

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

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

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

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are

- (a) Rationally based on the perception of the witness and
- (b) Helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

### **Rule 702. Testimony by Experts**

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

*Note to Rule 702 – Previously, the Minnesota Rules contemplated under Rule 702.1 requesting the court to recognize a witness as an expert with respect to a specific field of expertise and thus able to render an opinion in that area of expertise. This is not a procedure under Minnesota's Rules of Civil or Criminal Procedure and thus the qualification requirement has been removed to avoid confusion by attorneys and judges who may be judging a round. There is, however, no change in the need to lay the foundation of the qualifications of the witness as an expert and for the witness to render an opinion due to their knowledge, skill, experience, or education. The opposing side should object on the basis of lack of foundation and/or Rule 702 if a witness seeks to provide opinion testimony outside their area of expertise as established in the questioning in the direct examination.*

### **Rule 703. Basis of Opinion Testimony by Experts**

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

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

- (a) Opinion or inference testimony otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact.
- (b) In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

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

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

## **Article VIII. Hearsay**

### **Rule 801. Definitions**

The following definitions apply under this article:

- (a) **Statement:** an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.
- (b) **Declarant:** a person who makes a statement.
- (c) **Hearsay:** a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
- (d) A statement is *not* hearsay if:
  - (1) **Prior statement by witness.** -- The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is
    - (a) Inconsistent with the declarant’s testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or
    - (b) Consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or
    - (c) One of identification of a person made after perceiving the person; or
  - (2) **Admission by a party-opponent.** -- The statement is offered against a party and is
    - (a) The party’s own statement in either an individual or a representative capacity or
    - (b) A statement of which the party has manifested an adoption or belief in its truth, or
    - (c) A statement by a person authorized by the party to make a statement concerning the subject, or
    - (d) A statement by the party’s agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or
    - (E) A statement by a co-conspirator of a party during the course in furtherance of the conspiracy.

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

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

*Example:* Witness A testifies, “Some of the other tenants told me that Jones often failed to keep his apartments in good repair.” This would not be admissible to prove that Jones often failed to keep his apartments in good repair, which was the matter asserted in the out-of-court statement. But, it might be admissible to prove that A had some warning that Jones did not keep his apartments in good repair, if that were an issue in the case, since it would not then be offered for the truth of the matter asserted.



*Comment:* Why should the complicated and confusing condition be added that the out-of-court statement is only hearsay when “offered for the truth of the matter asserted?” The answer is clear when we look to the primary reasons for the exclusion of hearsay, which are the absence in hearsay testimony of the normal safeguards of oath, confrontation, and cross-examination which test the credibility and accuracy of the out-of-court speaker.

*For example,* if Ms. Jones testified in court, “My best friend, Ms. Smith, told me that Bill was driving 80 miles per hour” and that out-of-court statement was offered to prove the truth of the matter asserted (that Bill was driving 80 miles per hour), we would be interested in Smith’s credibility, i.e., her opportunity and capacity to observe, the accuracy of her reporting, and tendency to lie or tell the truth. The lack of an oath, confrontation, and cross-examination would make the admission into evidence of Smith’s assertion about Bill unfair to the opposing party. If the statement was offered, however, to show that Ms. Smith could speak English, then its value would hinge on Ms. Jones’ credibility (who is under oath, present, and subject to cross-examination) rather than Ms. Smith’s, and it would not be hearsay.

*Another example:* While on the stand, the witness says, “The salesperson told me that the car had never been involved in an accident.” This statement would not be hearsay if offered to prove that the salesman made such a representation to the witness. (The statement is not offered to prove the truth of the matter asserted.) If offered to prove that the car had never been in an accident, it would not be allowed because it would be hearsay.

*Objections:* “Objection. Counsel’s question is seeking a hearsay response,” or “Objection. The witness’ answer is based on hearsay. I ask that the statement be stricken from the record.”

*Response to objection:* “Your Honor, the testimony is not offered to prove the truth of the matter asserted, but only to show...”

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

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

1. **Present sense impression.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
2. **Excited utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
3. **Then existing mental/emotional/physical conditions.** A statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant’s will.
4. **Statements made for purposes of medical diagnosis or treatment.**

5. **Recorded Recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.

6. **Records of regularly conducted activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

7. **Learned treatises.** To the extent called to the attention of an expert witness upon cross exam or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.

8. **Reputation as to character.** Reputation of a person's character among associates or in the community.

9. **Judgment of previous conviction.** Evidence of a judgment finding a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

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

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

1. Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
2. Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or
3. Testifies to a lack of memory of the subject matter of the declarant's statement; or
4. Can't be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

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

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

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

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

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

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

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

**5. Forfeiture by wrongdoing.** A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

**Rule 805. Hearsay within Hearsay:** Hearsay included within hearsay is not excluded if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

**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 Minnesota High School Mock Trial Rules of Evidence.

Any clarification of rules or case materials will be issued in writing to all participating teams no less than two weeks prior to the tournament.

Each team is responsible for the conduct of persons associated with the team throughout the mock trial competition.

## ***Pretrial Stipulations***

***Pursuant to Rule 3.4 of the Minnesota Mock Trial Rules, the following pretrial stipulation controls the mock trial competition. Recitation of these items is not scored.***

- 1. Standard of Review.*** *The parties jointly move the Court to judge this mock trial according to the mock trial standards, not the legal merits of the case.*
- 2. Rating Standards.*** *The parties jointly move the Court to use the evaluative criteria provided on the official mock trial score sheet. By these standards, scores below “4” are reserved for unprofessional conduct. A high score of “10” is reserved for superlative presentations.*
- 3. Full Hearing of Evidentiary Objections and Argument.*** *The parties jointly move the Court to allow each side to present all of its witnesses (unless the party’s time has expired) and to make and fully argue all objections. While objections to the foundation and relevance of testimony and exhibits should be made and fully argued, the parties jointly move the Court to apply a reasonably inclusive standard for admissibility.*
- 4. Constructive Critique.*** *The parties jointly advise the Court that, pursuant to Rule 4.24, the judging panel is allowed a combined total of ten minutes after the trial for constructive comments. It is recommended that each judge limit themselves to a maximum of three comments. The timekeeper will monitor the time following the trial.*
- 5. Scoring the Use of Notes.*** *The parties jointly advise the Court that, pursuant to Rule 4.21, the use of notes by attorneys is allowed, but to the extent such use detracts from the overall performance, the scores may reflect.*
- 6. Mathematical Computation and Error Checking.*** *The parties jointly move the Judges to use a calculator to check the score tabulation; double check each other’s math; and confirm that the Presiding Judge has filled in the tie-breaker box.*
- 7. Unfair Extrapolations.*** *The parties jointly advise the Court to take notice of Rule 2.2, as recently modified, including its definitions of “Witness Materials,” “Material Facts,” and “Reasonably Consistent.”*

***Presiding Judge: The parties’ stipulation is accepted, and the motions therein granted.***