

## V. THE FORM AND SUBSTANCE OF A TRIAL

### A. A Civil Case - Background Information on the Law

In civil law, when someone does something wrong it is known as a tort. In this case the plaintiff, Kelly Simon, alleges that a tort has been committed and is suing under the legal theory of wrongful death.

#### 1. A Wrongful Death Cause of Action

A "wrongful death" occurs when a person is killed due to the negligence or misconduct of another. The plaintiff has the burden of proof. This means that Simon has the obligation to offer evidence that will prove each element of the claim. These elements include:

- the death of a human being,
- caused by the negligence or misconduct of another (the defendant(s)),
- the victim &/or survivor (plaintiff) has suffered loss as a result of the death.

(Note that a negligence action requires proof its own elements some of which overlap with those found in the wrongful death claim:

1. duty - the defendant owed a duty of care to the defendant
2. breach of duty – that duty was violated, or breached, by the defendant's conduct,
3. causation – the defendant's conduct caused the plaintiff's harm, and
4. damages – the plaintiff suffered actual damages.)

The plaintiff must prove each part. If the plaintiff fails to prove even one of the elements above, the defendant will win.

#### 2. Defenses Against a Wrongful Death Action

For the defendant to prevail, he or she has different options. One is by showing that at least one of the elements above has not been proven. Other defenses in this case could be comparative negligence and assumption of risk.

The defendant will not be held liable if his or her actions are not the **proximate cause** of the harm. The proximate cause of an injury is the primary cause; it is the cause that produces the injury. (When pedestrian was struck by automobile driven by a drunk driver, for example, the driver's actions are the obvious proximate cause of injury.) In situations where the defendant's action plays a *substantial* part in causing the harm and that harm might have been reasonably anticipated as a natural consequence of the act, then it may also be considered the proximate cause. (Examples: a pedestrian is struck by a runaway car when the car's emergency breaks failed when parked on a hill, the car's owner may be liable. What if: the owner knew the car had faulty breaks, or the car was pushed downhill when hit by another speeding car?)

**Comparative negligence** means dividing the loss according to the degree to which each party is at fault. If the defendant can prove that more than 50% of the fault lies with the plaintiff (Jordan Simon, the deceased), then the plaintiff gets no damages and the defense wins.

Another defense, called **assumption of the risk**, may be used by the defense when the plaintiff (here, Jordan Simon, the deceased) knew there was a risk but proceeded with the risky behavior anyway. This defense can be used successfully only when the plaintiff had full knowledge of and appreciated the danger, yet voluntarily exposed him or herself to the risk.

When deciding fault, the jury will consider what is a reasonable standard of care. A child is not held to as high a standard as an adult. A child would be expected to use the degree of care that would be expected of other similar children (age, experience, etc.). An adult is expected to anticipate the ordinary behavior of children, and that children might not exercise the same degree of care for their own safety as adults.

### **3. Proof by a Preponderance of Evidence**

The standard of proof in a civil case is the preponderance of the evidence. This standard requires that more than 50% of the weight of the evidence be in favor of the winning party -- the mere tipping of the scales to one side or the other. This means that the plaintiff only has to show that it is more likely than not that Jordan Simon's death occurred as a result of either or both defendants' action or inaction. Likewise, the defendants need only prove that Jordan's death occurred because of his or her own actions or inactions.

## **B. Role Descriptions**

### **1. Attorneys**

Trial attorneys control the presentation of evidence at trial and argue the merits of their side of the case. They introduce evidence and question witnesses to bring out the facts surrounding the allegations.

Demeanor of counsel is most important. Generally, all attorneys should be sympathetic and supportive of their own witnesses. In the same vein, it is bad manners and unethical to be sarcastic, snide, hostile or contemptuous of the other side. The element of surprise may be a valuable attorney's tool, but it is best achieved by being friendly and winning over everybody in the courtroom.

The plaintiff's attorneys present the case for Kelly Simon on behalf of the deceased, Jordan Simon. By questioning witnesses, they will try to convince the jury that the defendants, Terry Swift and Eastside High School are responsible for Jordan Simon's death.

The defense attorneys present the case for the defendants, Terry Swift and Eastside High School. They will offer their own witnesses to present the defendants' version of the facts. The defense may undermine the plaintiff's case by showing that their witnesses cannot be depended upon or that their testimony does not make sense or is seriously inconsistent.

Trial attorneys on both sides will:

- make opening statements and closing arguments
- conduct direct examination, cross examination conduct redirect and re-cross if necessary
- make appropriate objections (note: only the direct and cross-examining attorneys for a particular witness may make objections during that testimony)
- do the necessary research and be prepared to act as a substitute for an other attorneys

#### **a. Opening Statement**

The opening statement outlines the case it is intended to present. The plaintiff delivers the first opening statement. A good opening statement should explain what the attorney plans to prove,

how it will be proven, and mention the burden of proof – the amount of evidence needed to prove a fact (in a civil case, preponderance of the evidence). It should be presented in an orderly sequence that is easy to understand.

Begin your statement with a formal address to the judge:

“Your Honor, my name is (full name), representing the plaintiff/defendant in this case”

or

“Your Honor, my name is (full name), counsel for the plaintiff/defendant in this action.”

Proper phrasing in an opening statement includes:

“The evidence will indicate that ...”

“The facts will show that ...”

“Witnesses (full names) will be called to tell ...”

“The defendant will testify that ...”

*Tips:* You should appear confident, make eye contact with the judges, and use the future tense in describing what your side will present. Do not read your notes word for word – use your notes sparingly and only for reference.

## **b. Direct Examination**

Attorneys conduct direct examination of their own witnesses to bring out the facts of the case.

Direct examination should:

- call for answers based on information provided in the case materials
- reveal all of the facts favorable to your position
- ask questions that allow the witness to tell the story. Do not ask leading questions which call for only “yes” or “no” answers – leading questions are only appropriate during cross-examination
- make the witness seem believable
- keep the witness from rambling about unimportant matters

Call for the witness with a formal request:

“Your Honor, I would like to call (full name of witness) to the stand.”

The clerk will swear in the witness before you ask your first question.

You may wish to ask some introductory questions of the witness to make him/her feel comfortable. Appropriate introductory questions might include:

- the witness’ name
- length of residence or present employment, if this information helps to establish the witness as an expert

Proper phrasing of questions on direct include:

“Could you please tell the court what occurred on (date)?”

“Please describe how you know the plaintiff.”

“Did anyone do anything while you waited?”

Conclude your direct examination with:

“Thank you Mr./s. \_\_\_\_\_. That will be all, your Honor.”

*Tips:* Isolate exactly what information each witness can contribute to proving your case and prepare a series of clear and simple questions designed to obtain that information. Be sure all

items you need to prove your case will be presented through your witnesses. Never ask questions when you do not know the answer! Listen to the answers -- if you need a moment to think, it is okay to ask the judge for a moment to collect your thoughts or to discuss a point with co-counsel.

**c. Cross Examination**

See explanations, examples, and tips for Rule 611.

**d. Redirect and Re-Cross Examination**

See explanation and note to Rule 40.

**e. Closing Arguments**

See explanation to Rule 41.

**2. Witnesses**

See explanation to Rule 3.

**3. Court Clerk, Bailiff, Team Manager**

It is recommended that you provide two separate people for these roles; if you use only one, then that person **must** be prepared to perform as clerk and bailiff in every trial. In addition to the individual clerk and bailiff duties outlined below, this person can act as your **team manager**. S/he could be responsible for keeping a list of phone numbers of all team members and ensuring that everyone is informed of the schedule of meetings. In case of illness or absence, the manager could also keep a record of all witness testimony and a copy of all attorneys' notes so that someone else may fill in if necessary.

**When evaluating the team performance/participation category in the scoresheet, judges will incorporate the contributions of the clerk and bailiff in the point assessment.**

The court clerk and bailiff aid the judge in conduction of the trial. For the purpose of the competition, the duties described below are assigned to the roles of clerk and bailiff.

The **plaintiff** will be expected to provide the **clerk** for any given trial. **Defense** will provide the **bailiff**.

**a. Duties of the Clerk**

When the judge arrives in the courtroom introduce yourself and explain that you will assist as the court clerk. The clerk's duties are as follows:

1. Roster and rules of competition: The clerk is responsible for bringing a roster of students and their roles to each trial round. You should have enough copies to be able to give a roster to each judge in every round as well as a few extras. Use the roster form in the mock trial packet. In addition, the clerk is responsible for bringing to the trial a copy of the "Rules of Competition." In the event that questions arise and the judge needs further clarification, the clerk is to provide this copy to the judge.

2. Swear in the witnesses: Every witness should be sworn in as follows:

“Do you promise that the testimony you are about to give will faithfully and truthfully conform the facts and rules of the Mock Trial Competition?”

Witness responds, “I do.”

Clerk then says, “Please be seated and state your name for the court and spell your last name.”

### 3. Mark exhibits for attorneys.

An experienced clerk is **critical to the success** of a trial and points will be given on his/her performance.

#### **b. Duties of the Bailiff**

When the judge arrives in the courtroom, introduce yourself and explain that you will assist as the court bailiff. The bailiff’s duties are to call the court to order and to keep time during the trial.

Call to Order: As the judges enter the courtroom, say,

“All rise. The mock trial circuit court, the Honorable Judge \_\_\_\_\_ presiding, is now in session. Please be seated and come to order.”

If the judge calls a recess during the trial, say “all rise” as the judges leave the courtroom and again as they re-enter.

Timekeeping. The bailiff is responsible for bringing a stopwatch to the trial. Be sure to practice with it and know how to use it before the competition. Follow the time limits set for each segment of the mock trial and keep track of the time used and time left on the time sheet provided in the mock trial materials.

Time should stop when attorneys make objections. Restart once the judge has ruled on the objection and the next question is asked. You should also stop the time if the judge questions a witness or attorney.

After each witness has finished his/her testimony announce the time remaining, e.g., if after direct examination to two witnesses, the plaintiff has used ten minutes, announce “10 minutes remaining” (20 minutes total allowed for direct/redirect, less the ten minutes already used). When the time has run out for any segment of the trial, announce “Time!” and hold up the “0” card. After each witness has completed his/her testimony, mark on the time sheet the time to the nearest one-half minute. When three minutes are left, bailiff will hold up “3” minute card, then again at “1” minute and finally at “0” minutes. Be sure time cards are visible to all the judges as well as to the attorneys when you hold them up. Time sheets will be provided. Time cards (3, 1, 0 minute) will be provided in each courtroom. Leave the timecards in the courtroom for the next trial round. An experienced bailiff is **critical to the success** of a trial and points will be given on his/her performance.

#### UNOFFICIAL TIMER (optional)

Teams may, at their option, provide an unofficial timer during the trial rounds. The unofficial timer can be a Clerk or a currently performing attorney from plaintiff/prosecution’s attorney side. This unofficial timer must be identified before the trial begins and may check time with the bailiff twice during the trial (once during the plaintiff’s case-in-chief and once during the presentation of the defense’s case). When possible, the unofficial timer should sit next to the official timer.

## VI. RULES OF THE COMPETITION

### A. The Problem

#### Rule 1. Rules

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

Rules of the competition as well as proper rules of courthouse and courtroom decorum and security must be followed. Classroom Law Project has the discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violations, or breaches of decorum that affect the conduct of a trial or that impugn the reputation or integrity of any team, school, participant, court officer, judge, or mock trial program. Questions or interpretations of these rules are within the discretion of Classroom Law Project; its decision is final.

#### Rule 2. The Problem

The problem is a fact pattern which contains statement of fact, witness statements, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

#### Rule 3. Witness Bound by Statements

Each witness is bound by the facts contained in his/her own witness statement, also known as an affidavit, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 4, unfair extrapolation.

If in cross-examination, an attorney asks for unknown information, the witness may respond, "I don't know," or may offer a response that is consistent with the witness' statement or affidavit and does not materially affect the witness/testimony.

A witness is **not** bound by facts contained in other witness statements.

*Explanation:* Witnesses will supply the facts in the case. Witnesses may testify only to facts stated in or reasonably implied from his or her own witness statements or fact situation. On direct examination, when your side's attorney is asking you questions you should be prepared to tell your story. Learn the case thoroughly, especially your own witness statement. Know the questions your attorney will ask you and prepare clear and convincing answers that contain the information that your attorney is trying to get you to say. However, do not recite your witness statement verbatim. Be able to put it into your own words. Be sure that your testimony is never inconsistent with, nor a material departure from, the facts in your affidavit.

During cross-examination, anticipate what you will be asked and prepare your answers accordingly. Isolate all the possible weaknesses, inconsistencies, problems in your testimony and be prepared to explain them as best you can. However, be sure that your testimony is never inconsistent with, nor a material departure from, the facts in your statement. *Witnesses can be impeached if they contradict the material contained in their witness statements (see FRE 607).*

The stipulated facts are a set of indisputable facts from which witnesses and attorneys may draw reasonable inferences. The witness statements contained should be viewed as signed statements made in sworn depositions. If you are asked a question calling for an answer that cannot reasonably be inferred from the materials provided, you must reply, “I don’t know” or “I can’t remember.” It is up to the attorney to make the appropriate objection when witnesses are asked to testify about something which is not generally known, or cannot be reasonably inferred from the fact situation or a signed witness statement.

#### **Rule 4. Unfair Extrapolation**

Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting unfair extrapolation. Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. A fair extrapolation is one that is neutral.

If a witness is asked information not contained in the witness’ statement, the answer must be consistent with the statement and may not materially affect the witness’ testimony or any substantive issue of the case.

Attorneys for the opposing team may refer to *Rule 4* for a special objection, such as “unfair extrapolation” or “outside the scope of the mock trial materials.”

Possible rulings a judge may give include:

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

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings (see FRE 602 and Rule 3). The decision of the presiding judge regarding extrapolation or evidentiary matters is final.

#### **Rule 5. Gender of Witnesses**

All witnesses are gender neutral. Personal pronouns in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender. In this case, the gender of the student playing the role of witness for the plaintiff Morgan Pearce shall be the same as the deceased, Jordan Simon.

### **B. The Trial**

#### **Rule 6. Team Eligibility, Teams to State**

Teams competing in the Oregon High School Mock Trial Championship must register their team(s) by the registration deadline. A school may register one or two teams.

To participate in the state finals, a team must successfully compete at the regional level. Teams will be assigned to regionals by the sponsors. Teams may be asked to compete in a region other than their usual one in order to balance the number of teams.

For 2008-09, the following dates for **regional** competitions are:

**Saturday, February 28\*** Albany, Baker (if enough teams register), Bend, Clackamas County, Grants Pass, McMinnville (formerly Salem), Medford, Multnomah County, Pendleton, Washington County

\*February 28 is the expected date for regional competitions. Teams should be aware, however, that it could change due to unforeseen circumstances. The Regional Coordinator has discretion to alter the date. If dates change, every effort will be made to notify all times in a timely manner.

All teams participating at the regional level must be prepared to compete at the state level should they win their regional competition. The **state finals** are **March 13-14**, in Portland.

A minimum of four participating teams is required to hold a regional competition. The following formula will be used to determine the number of teams that advance to the state competition:

# of Teams in Regional	# of Teams to State
4-5	1
6-10	2
11-15	3
16-20	4
21-25	5
26+	7

## **Rule 7. Team Composition**

A mock trial team must consist of a **minimum of eight** students and may include up to a **maximum of 18** students all from the same school. At the local level, more students may be involved as jurors, but juries will not be used in the competition. Students could also be used in support roles as researchers, understudies, photographers, court artists, court reporters, and news reporters. However, none of these roles will be used in the competition. Schools are encouraged to use the maximum number of students allowable, especially where there are large enrollments.

*Note:* At the National High School Mock Trial Championships, teams may consist of a maximum of eight members with six participating in any given round. Since teams larger than eight members are ineligible, Oregon’s winning team may have to pare down its team members to participate at the national level.

A mock trial team is defined as an entity that includes attorneys and witnesses for both the plaintiff/prosecution and defense (students may play a role on the plaintiff/prosecution side as well as on the defense side if necessary), a clerk, and a bailiff. One possible team configuration could be:

3 trial attorneys for the plaintiff/prosecution	3 trial attorneys for defense
3 witnesses for the plaintiff/prosecution	3 witnesses for the defense
1 clerk, and 1 bailiff.	

All team members, including teacher and attorney coaches, are required to wear name badges at all levels of competition. Badges are provided by the coordinators.

All mock trial teams must submit a roster listing the team name and all coaches and students to the mock trial coordinators at the student orientation; this can be found in the Appendices. Separate team rosters shall be submitted to the judges for the plaintiff’s team roster and the defense’s team roster. Each team must submit four copies of the roster – one for each judge, plus

one for the opposing team – for each round. This sheet will also serve as the one on which the judges’ will take notes during the trial. This will aid them during the trial.

If a school enters two teams, team members **shall not switch** from one team to the other at any time for any round of regional or state competition.

For schools entering one team, your team name will be the same as your school name. For schools entering two teams, your team name will be your school name plus one of your school colors (for example, Sandy Ridge Black and Sandy Ridge Blue).

For purposes of pairings in the competition, all teams will be assigned letter designations such as AB or CD. This will help keep schools anonymous and judging fair. (Please advise spectators to leave school sweatshirts and other identifying apparel at home!) Teams will be assigned letter codes by Classroom Law Project prior to the competition.

### **Rule 8. Team Presentation**

Teams must present both the plaintiff/prosecution and defense sides of the case. All team members must be present and ready to participate in all rounds. The coordinators guarantee that both the plaintiff/prosecution and defense sides of every team will have at least one opportunity to argue its side of the case.

*Note:* Because teams are power-matched after Round 1, there is **no guarantee that in Round 2 the other side of your team will automatically argue**. However, if in Rounds 1 and 2 the same side argued, then you are guaranteed that in Round 3 the other side will argue. **Parents should be made aware** of this rule.

### **Rule 9. Emergencies**

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

A forfeiting team will receive a loss and points totaling the average number of the team ballots and points received by the losing teams in that round. The non-forfeiting team will receive a win and an average number of ballots and points received by the winning teams in that round. **Final determination of emergency, forfeiture, reduction of points, or advancement, will be made by the Coordinator.**

### **Rule 10. Team Duties**

Team members are to divide their duties as evenly as possible. Opening statements must be given by both sides at the beginning of the trial. The attorney who will examine a particular witness on direct is the only person who may make the objections to the opposing attorney’s questions of that witness’ cross-examination; and the attorney who will cross-examine a witness will be the only one permitted to make objections during the direct examination of that witness.

Each team must call all three witnesses; failure to do so will result in a mandatory reduction of points. Witnesses must be called by their own team and examined by both sides. Witnesses may

not be recalled by either side.

### **Rule 11. Swearing of Witnesses**

The swearing of witnesses is done by the **clerk** (provided by the plaintiff/prosecution). 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 12. Trial Sequence and Time Limits**

Each side will have a maximum of 40 minutes to present its case. The trial sequence and time limits are as follows:

- |                                   |   |
|-----------------------------------|---|
| 1. Introductory matters           | 5 minutes total (conducted by judge)*   |
| 2. Opening Statement              | 5 minutes per side                      |
| 3. Direct and Redirect (optional) | 20 minutes per side                     |
| 4. Cross and re-cross (optional)  | 10 minutes per side                     |
| 5. Closing argument               | 5 minutes per side**                    |
| 6. Judges’ debrief                | 15 minutes total (conducted by judges)* |

\*Not included in 40 minutes allotted for each side of the case

\*\* Plaintiff/prosecution does **not** need to reserve time for rebuttal; whatever time remains will be allowed for a closing rebuttal arguments.

The plaintiff/prosecution gives the opening statement first. The plaintiff/prosecution gives the closing argument first; whatever time remains may be used for rebuttal. The plaintiff’s rebuttal is limited to the scope of the defense’s closing argument. None of the foregoing may be waived, nor may the order be changed.

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

### **Rule 13. Timekeeping**

Time limits are mandatory and will be enforced. The official timekeeper is the **bailiff** and is provided by the **defense**.

1. Timing will halt during objections, extensive questioning from a judge, and administering the oath.
2. Timing will **not** halt during the admission of evidence unless there is an objection by opposing counsel.
3. Three and one-minute card warnings must be given before the end of each trial segment. **Students will be automatically stopped by the bailiff at the end of the allotted time for each segment.**
4. The bailiff shall also time the judges' critique after the trial; the judging panel will be allowed 15 minutes (5 minutes per judge). When the time has elapsed, the bailiff will hold up the “0” card. Presiding judge should limit critique accordingly.

### **Rule 14. Time Extensions and Scoring**

The Presiding Judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the scoring judges may determine

individually whether to discount points because of overruns in time.

**Rule 15. Supplemental Material, Illustrative Aids, Costuming**

Teams may refer only to materials included in the trial packet. No illustrative aides of any kind may be used, unless provided in the case packet. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless authorized specifically in the case materials. Use of easels, flip charts, and the like is prohibited.

**Rule 16. Trial Communication**

Instructors, non-performing team members, alternates and observers shall not talk to, signal, communicate with, or coach their teams during trial. **This rule remains in force during any recess time** that may occur. Performing team members may, among themselves, communicate during the trial; however, no disruptive communication is allowed. There must be **no spectator or non-performing team member contact with the currently performing student team members once the trial has begun.**

Contact with judges, except for currently performing team members during the trial round, is not permitted throughout the competition. This includes not only team members but also coaches, parents, and other supporters.

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. There will be an **automatic two-point deduction** from a team's total score if the coach, other team members or spectators are found in violation of this rule by the judge or by the coordinators.

Regional coordinators may exercise their discretion if they find a complaint is frivolous or the conversation was harmless.

**Rule 17. Viewing a Trial**

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

**Rule 18. Videotaping/Photography, Media**

Any team has the option to refuse participation in videotaping, tape recording, still photography or media coverage. However, teams should be aware that from time to time media coverage occurs. Representatives from the media are instructed to avoid disruption by the Coordinator or sponsors. Teams shall allow the media to be in their courtroom.

**C. Judging and Team Advancement**

**Rule 19. Decisions**

All decisions of the judging panel are FINAL.

## **Rule 20. Composition of Panel**

The judging panel will consist of three individuals: one presiding judge, one attorney judge, and one educator/community member judge (all three complete score sheets). All judges receive the mock trial case materials, a memorandum outlining the case, orientation materials, and a briefing in a judges' orientation.

During the final round of the state competition, the judges' panel may be comprised of more than three members, at the discretion of Classroom Law Project.

## **Rule 21. Score Sheets/Ballots**

The term "ballot" will refer to the decision made by a scoring judge as to which team made the best presentation in the round. The term "score sheet" is use in reference to the form on which overall team presentation points are recorded. Score sheets are to be completed individually by the judges. The team that earns the highest points on an individual judge's score sheet is the winner of that ballot. The team that receives the majority of the three ballots wins the round. The ballot votes determine the win/loss record of the team for power-matching and ranking purposes.

## **Rule 22. Completion of Score and Evaluation Sheets**

The judges will give a number of points, 1 (poor) to 10 (excellent) less penalty points, to each team for its presentation. **NO TIE IS ALLOWED IN THE TEAM POINT BOX.** The team with the highest number of points receives the ballot from that scoring judge. The points shall not be announced during the competition.

## **Rule 23. Team Advancement**

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

1. Win/Loss record - equals the number of rounds won or lost by a team;
2. Total number of ballots - equals the number of judges' winning votes that a team earned in preceding rounds;
3. Total number of points accumulated in each round;
4. Point spread against opponents - The point spread is the difference between the total points earned by the team whose tie is being broken less the total points of that team's opponent in each previous round. The greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.

## **Rule 24. Power Matching/Seeding**

A random method of selection will determine opponents in the first round. A power-match system will determine opponents for all other rounds. The schools emerging with the strongest record from the three rounds will advance to the state competition and final round. The first-place team at state will be determined by ballots from the championship round only.

A ballot is each judge's individual report of a win for the round. There are three ballots in every round. A winning team could receive two or three of the judge's ballots.

Power-matching provides that:

1. Pairings for the first round will be at random;
2. All teams are guaranteed to present each side of the case at least once;

3. Win/loss record will determine the winners' and losers' brackets. Sorting within brackets will be determined in the following order (1) win/loss record; (2) number of ballots; and (3) total presentation points. The team with the highest number of ballots in the bracket will be matched with the team with the lowest number of ballots in the bracket; the next highest with the next lowest, and so on until all teams are paired;
4. If there is an odd number of teams in a bracket, the team at the bottom of that bracket will be matched with the top team from the next lower bracket;
5. Teams will not meet the same opponent twice;
6. To the extent possible, teams will alternate the side of the case they present in subsequent rounds;
7. When matching for the next round, bracket integrity is given more weight than alternate side presentation.

### **Rule 25. Merit Decisions**

Judges are not required to make a ruling on the legal merits of the trial. However, during the critiquing process, judges **may** inform students of a hypothetical verdict. Judges **shall not** inform the teams of score sheet results.

### **Rule 26. Effect of Bye/Default or Forfeiture**

A "bye" becomes necessary when an odd number of teams are in the competition. The byes will be assigned based on a random draw. For the purpose of advancement and seeding, when a team gets a bye or wins by default, that team will be given a win, and the number of ballots and points equal to the average of all winning teams' ballots and points of that same round.

A forfeiting team will receive a loss and points totaling the average number of the judges' ballots and performance points received by the losing teams in that round. If a trial cannot continue, the other team will receive a win and an average number of ballots and points received by the winning teams in that round.

## **D. Dispute Settlement**

### **Rule 27. Reporting Rules Violation/Inside the Bar**

At the conclusion of the trial round, the presiding judge will ask each side if it needs to file a dispute. If any team has serious reason to believe that a material rules violation has occurred or that its opponents have violated the Code of Ethical Conduct, one of its student attorneys shall indicate that the team intends to file a dispute. The presiding judge will provide the attorney with a dispute form, on which the attorney will record in writing the nature of the dispute. The attorney may communicate with other performing team members (attorneys and witnesses) before lodging the notice of dispute or in preparing the form. **At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke dispute procedure.** Teams filing frivolous disputes may be penalized.

### **Rule 28. Dispute Resolution Procedure**

The presiding judge will review the written dispute and determine whether it deserves a hearing or should be denied. If the dispute is denied, the judge will record the reasons for this, announce her/his decision to the Court; retire along with the other judges to complete the scoring process.

If the judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a spokesperson. After the spokespersons have had time (five minutes maximum) to prepare their arguments, the judge will conduct a hearing on the dispute, providing each team's spokesperson three minutes for a presentation. The spokespersons may be questioned by the judge. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider her/his ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

### **Rule 29. Effect of Violation on Score**

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

### **Rule 30. Reporting Rules Violation/Outside the Bar**

Charges of ethical violations that involve people other than student team members must be made promptly to a trial coordinator, who will ask the complaining party to complete a dispute form. The form will be taken to the coordinator's communication's center, whereupon the panel will rule on any action to be taken regarding the charge, including notification of the judging panel. Violations occurring during a trial involving students competing in a round will be subject to the dispute process described in the Rules.

## **VII. RULES OF PROCEDURE**

### **A. Before the Trial**

#### **Rule 31. Team Roster**

Copies of the Team Roster Form (see Appendix) must be completed and duplicated by each team prior to arrival at the competition. At student orientation, each team must submit a completed team roster including the names and addresses of all judges working with the team to the Coordinator. Additionally, four copies – one for each judge, plus one for the opposing team – shall be provided at the beginning of each round (judges will use the Team Roster for note taking). Teams must be identified only by their letter code on the form going to judges; no information identifying team origin should appear on this form. Before beginning a trial, the teams must exchange copies of the Team Roster Form with witness' gender identified so that references to them can be made correctly.

#### **Rule 32. Stipulations**

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

#### **Rule 33. The Record**

No stipulations, pleadings, indictment, or jury instructions shall be read into the record.

## **B. Beginning the Trial**

### **Rule 34. Jury Trial**

The case will be tried to a jury; arguments are to be made to the judge and jury. Teams may address the scoring judges as jury.

### **Rule 35. Standing During Trial**

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

### **Rule 36. Objection During Opening Statement/Closing Argument**

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

*Note:* It will be the judge's responsibility to handle any legally inappropriate statements made in the closing, while scorers will also keep in mind the closing argument judging criteria.

## **C. Presenting Evidence**

### **Rule 37. Objections**

Teams may raise objections like those listed below. This list is not exhaustive; other objections may be raised so long as they are available under the Mock Trial Rules of Evidence or other mock trial rules. **Objections not directly linked to mock trial rules are not permissible.**

1. **Argumentative Questions:** An attorney shall not ask argumentative questions.

*Example:* during cross-examination of an expert witness the attorney asks, "you aren't as smart as you think you are, are you?"

2. **Lack of Proper Foundation:** Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.

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

4. **Questions Calling for Narrative or General Answer:** Questions must be stated so as to call for specific answer.

*Example:* "tell us what you know about the case."

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

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

### **Rule 38. Procedure for Introduction of Exhibits**

As an *example*, the following steps may be used to introduce evidence:

(*Note*: Steps 1 - 7 introduce the item for identification.)

1. All evidence will be pre-marked as exhibits.
2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. “Your Honor, may I approach the bench to show you what has been marked as Ex. # \_\_\_?”
3. Show the exhibit to opposing counsel.
4. Ask for permission to approach the witness. Give the exhibit to the witness.
5. “I now hand you what has been marked as Exhibit No. \_\_\_ for identification.”
6. Ask the witness to identify the exhibit, “would you identify it, please?”
7. Witness answers with identification only.  
(*Note*: Steps 8 - 12 offer the item into evidence.)
8. Offer the exhibit into evidence. “Your Honor, we offer Exhibit No. \_\_\_ into evidence at this time. The authenticity of the exhibit has been stipulated.”
9. 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.
10. 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?”
11. Court, “Exhibit No. \_\_\_ is/not admitted.”
12. The attorney may then proceed to ask questions.

### **Rule 39. Use of Notes**

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

### **Rule 40. Redirect/Re-Cross**

Redirect and re-cross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Federal Rules of Evidence - Mock Trial Version. **For both redirect and re-cross, attorneys are limited two questions each.**

*Explanation:* Following cross-examination, the counsel who called the witness may conduct re-direct examination. Attorneys conduct re-direct examination to clarify new (unexpected) issues or facts brought out in the immediately preceding cross-examination only; they may not bring up other issues. Attorneys may or may not want to conduct re-direct examination. If an attorney asks questions beyond the issues raised on cross, they may be objected to as “outside the scope of cross-examination.” It is sometimes more beneficial not to conduct it for a particular witness. The attorneys will have to pay close attention to what is said during the cross-examination of their witnesses, so that they may decide whether it is necessary to conduct re-direct. Once re-direct is finished the cross examining attorney may conduct re-cross to clarify issues brought out in the immediately preceding re-direct examination only.

If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, during re-direct the attorney whose witness has been damaged may wish to “save” the witness. These questions should be limited to the damage the attorney thinks has been done

and should enhance the witness' truth-telling image in the eyes of the court. Work closely with your attorney coach on re-direct and re-cross strategies. Remember that time will be running during both re-direct and re-cross and may take away from the time needed to question other witnesses.

*Note:* Time used for redirect and re-cross **will be deducted** from total time allotted for direct and cross-examination for each side.

## **D. Closing Arguments**

### **Rule 41. Scope of Closing Arguments**

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

*Explanation:* a good closing argument summarizes the case in the light most favorable to your position. The plaintiff delivers the first closing argument. The closing argument of the defense concludes the presentation. A good closing should:

- be spontaneous, synthesize what actually happened in court rather than being re-packaged;
- be emotionally charged and strongly appealing (unlike the calm opening statement);
- emphasize the facts which support the claims of your side, but not raise any new facts, by reviewing the witnesses' testimony and physical evidence;
- outline the strengths of your side's witnesses and the weaknesses of the other side's witnesses;
- isolate the issues and describe briefly how your presentation addressed these issues
- summarize the favorable testimony
- attempt to reconcile inconsistencies that might hurt your side
- be well-organized, clear and persuasive (start and end with your strongest point);
- the plaintiff should emphasize that it has proven liability/negligence by a preponderance of the evidence;
- the defense should raise questions that suggest the continued existence of doubt.
- weave legal points of authority with the facts.

Proper phrasing includes:

“The evidence has clearly shown that ...”

“Based on this testimony, there can be no doubt that ...”

“The plaintiff has failed to prove that ...”

“The defense would have you believe that ...”

Plaintiff should conclude the closing argument with an appeal to find liability/negligence against the defendant. And the defense should say there is no liability/negligence.

## **E. CRITIQUE**

### **Rule 42. The Critique**

The judging panel is allowed 15 minutes for critiquing. As a part of the bailiff's timekeeping duties, he or she shall monitor the critique following the trial. Presiding judges are to limit critique sessions to the 15 minutes total (5 minutes per judge) time allotted. The bailiff shall inform the judges if their time has expired.

*Note:* Judges' 15 minutes is not included in 40 minutes allotted to each side of the case.

## **VIII. FEDERAL RULES OF EVIDENCE - MOCK TRIAL VERSION**

To assure each party of a fair hearing, certain rules have been developed to govern the types of evidence that may be introduced, as well as the manner in which evidence may be presented. These rules are called the "rules of evidence." The attorneys and the judge are responsible for enforcing these rules. Before the judge can apply a rule of evidence, an attorney must ask the judge to do so. Attorneys do this by making "objections" to the evidence or procedure employed by the opposing side. When an objection is raised, the attorney who asked the question that is being challenged will usually be asked by the judge why the question was not in violation of the rules of evidence.

The rules of evidence used in real trials can be very complicated. A few of the most important rules of evidence have been adapted for mock trial purposes. 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 Federal Rules of Evidence (Mock Trial Version) and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses.

For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence, and its numbering system. **Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure.** Text in italics represents 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 Federal Rules of Evidence (Mock Trial Version) govern the Oregon High School Mock Trial Championship.

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

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

*These Federal Rules of Evidence - Mock Trial Version govern the trial proceedings of the Oregon High School Mock Trial Competition.*

#### **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 IV. Relevancy and Its Limits**

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

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

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

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

*Explanation:* Questions and answers must relate to an issue in the case; this is called “relevance.” Questions or answers that do not relate to an issue in the case are “irrelevant” and inadmissible.

*Example:* (in a traffic accident case) “Mrs. Smith, how many times have you been married?”

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

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

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

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

(1) Character of accused. – Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;

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

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

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

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

(a) Reputation or opinion. – In all cases where evidence of character or a character trait is admissible, proof may be 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 407. Subsequent Remedial Measures**

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

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

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

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

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

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

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

## **Article 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 3.)

*Example:* “I know Harry well enough to know that two beers usually make him drunk, so I’m sure he was drunk that night, too.”

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

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

*Explanation:* On cross-examination, an attorney wants to show that the witness should not be believed. This is best accomplished through a process called “impeachment,” which may use one of the following tactics: (1) asking questions about prior conduct of the witness that makes the witness’ truthfulness doubtful (e.g. “isn’t it true that you once lost a job because you falsified expense reports?”); (2) asking about evidence of certain types of criminal convictions (e.g. “you were convicted of shoplifting, weren’t you?”); or (3) showing that the witness has contradicted a prior statement, particularly one made by the witness in an affidavit.

Witness statements in the Mock Trial materials are considered to be affidavits.

In order to impeach the witness by comparing information in the affidavit to the witness’ testimony, attorneys should use this procedure:

Step 1: Introduce the affidavit for identification (see Rule 38).

Step 2: Repeat the statement the witness made on direct or cross-examination that contradicts the affidavit.

*Example:* “Now, Mrs. Burns, on direct examination you testified that you were out of town on the night in question, didn’t you?”

Witness responds, “yes.”

Step 3: Ask the witness to read from his or her affidavit the part that contradicts the statement made on direct examination.

*Example:* “All right, Mrs. Burns, will you read paragraph three?” Witness reads, “Harry and I decided to stay in town and go to the theater.”

Step 4: Dramatize the conflict in the statements. Remember, the point of this line of questioning is to demonstrate the contradiction in the statements, not to determine whether Mrs. Burns was in town or not.

*Example:* “So, Mrs. Burns, you testified that you were *out* of town in the night in question didn’t you?”

“Yes.”

“Yet in your affidavit you said you were *in* town, didn’t you?”

“Yes.”

### **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 of 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.** Not applicable.

**Rule 610. Religious Beliefs or Opinions.** Not applicable.

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

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

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

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

*Explanation:* Cross examination follows the opposing attorney’s direct examination of his/her witness. Attorneys conduct cross examination to explore weaknesses in the opponent’s case, test the witness’s credibility, and establish some of the facts of the cross-examiner’s case whenever possible. Cross examination should:

- call for answers based on information given in witness statements or fact situation;
- use leading questions which are designed to get “yes” or “no” answers;
- never give the witness a chance to unpleasantly surprise the attorney;
- include questions that show the witness is prejudiced or biased or has a personal interest in the outcome of the case;
- include questions that show an expert witness or even a lay witness who has testified to an opinion is not competent or qualified due to lack of training or experience;

*Examples* of proper questions include: “Isn’t it a fact that ...?” “Wouldn’t you agree that ...?” “Don’t you think that ...?”

Cross examination should conclude with:

“Thank you Mr./s \_\_\_\_\_ (last name). That will be all, your Honor.”

*Tips:* Be relaxed and ready to adapt your prepared questions to the actual testimony given

during direct examination; always listen to the witness's answer; avoid giving the witness an opportunity to re-emphasize the points made against your case during direct examination; don't harass or attempt to intimidate the witness; and don't quarrel with the witness. **Be brief; ask only questions to which you already know the answer.**

(c) Leading questions. -- Leading questions are **not** permitted on direct examination of a witness (except as may be necessary to develop the witness' testimony). Leading questions **are** permitted on cross examination.

*Explanation:* A "leading" question is one that suggests the answer desired by the questioner, usually by stating some facts not previously discussed and then asking the witness to give a yes or no answer.

*Example:* "So, Mr. Smith, you took Ms. Jones to a movie that night, didn't you?" This is an appropriate question for cross-examination but not direct or re-direct.

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

*Explanation:* A short re-direct examination will be allowed following cross-examination if an attorney desires, and re-cross may follow re-direct. But in both instances, questions must be on a subjects raised in the immediately preceding testimony. If an attorney asks questions on topics not raised earlier, the objection should be "beyond the scope of re-direct/cross." See Rule 44 for more discussion of redirect and re-cross.

## **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.

*Explanation:* Unless a witness is qualified as an expert in the appropriate field, such as medicine or ballistics, the witness may not give an opinion about matters relating to that field. But a witness may give an opinion on his/her perceptions if it helps the case.

*Example - inadmissible lay opinion testimony:* "The doctor put my cast on wrong. That's why I have a limp now."

*Example - admissible lay opinion testimony:* "He seemed to be driving pretty fast for a residential street."

### **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:* Attorneys should qualify a witness as an expert by asking questions from the list

suggested above.

*Note:* Witnesses, including experts, cannot give opinions on the ultimate issue of the case, that is, whether the plaintiff or defendant was responsible. This is a matter for the judge or jury to decide.

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

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

*Explanation:* Unlike lay witnesses who must base their opinions on what they actually see and hear, expert witnesses can base their opinions on what they have read in articles, texts, or records they were asked to review by a lawyer, or other documents which may not actually be admitted into evidence at the trial. **These records or documents may include affidavits made by other witnesses.**

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

(a) Except as provided in subdivision (b), testimony in the form of an 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.

*Note:* Other than testimony of guilt or innocence in a criminal case, opinions on the ultimate issue are allowed; however, opinions on the ultimate issue must pass the requirements of Rules 701 and 702 that opinions be helpful to the jury, and the requirement of Rule 403 that evidence not waste the court's time. Opinions that merely tell the jury what result to reach are not helpful to the jury and waste the court's time.

## **Article VIII. Hearsay**

### **Rule 801. Definitions**

The following definitions apply under this article:

- (a) Statement -- A *statement* is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.
- (b) Declarant -- A *declarant* is a person who makes a statement.
- (c) Hearsay -- *Hearsay* is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

*Explanation:* If a witness tries to repeat what someone else has said, the witness is usually stopped from doing so by the hearsay rule. Hearsay is a statement made by someone other than the witness testifying. Because the statement was made outside the courtroom, usually a long time before the trial, it is called an "out-of-court statement." The hearsay rule also applies to written statements. The person who made the statement is referred to as the "declarant." Because the declarant is not the one testifying in court under oath, the declarant's statement is not considered reliable.

*Example:* Witness testifies in court, "Harry told me the blue car was speeding." What Harry said is hearsay because he is not the one testifying. He is not under oath,

cannot be cross-examined, and his demeanor cannot be assessed by the judge or jury. Further, the witness repeating Harry's statement might be distorting or misinterpreting what Harry actually said. For these reasons, Harry's statement, as repeated by the witness, is not reliable and therefore not admissible. The same is true if Harry's prior written statement was offered.

Only out-of-court statements which are offered to prove what is said in the statements are considered hearsay. For example, a letter that is an out of court statement is not hearsay if it is offered to show that the person who wrote the letter was acquainted with the person who received it. But if the letter was offered to prove that what was said in the letter was true, it would be hearsay.

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

(1) Prior statement by witness -- the declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is

(A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition or

(B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or

(C) one of identification or a person made after perceiving the person; or

*Explanation:* If any witness testifies at trial, and the testimony is different from what the witness said previously, the cross-examining lawyer can bring out the inconsistency. In the witnesses' statements in the mock trial materials (considered to be affidavits), prior inconsistent statements may be found (see Impeachment Rule 607).

(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.

*Explanation:* A statement made previously by a party (either the plaintiff or defendant) is admissible against that party when offered by the other side. Admissions may be found in the plaintiff's or defendant's own witness statements. They may also be in the form of spoken statements made to other witnesses.

## **Rule 802. Hearsay Rule**

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

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

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

(1) Present sense impression -- A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

*Example:* “As the car drove by Janet said, ‘Wow, that car is really speeding.’ ”

(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.

*Example:* A witness testifies, “Mary came running out of the store and said, ‘Carl has shot Robert!’ ”

(3) Then existing mental, emotional, or physical conditions -- A statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory of belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of a declarant’s will.

*Example:* A witness testifies, “Mary told me she was in a lot of pain and extremely angry at the other driver.”

(4) Statements for purposes of medical diagnosis or treatment -- Statements made for the purpose of medical diagnosis or treatment.

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

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

*Example:* A police report contains a notation written by the officer, “Harry told me the blue car was speeding.” The report might be admissible as a public record but Harry’s statement within the report is hearsay.

## **VI. NOTES TO JUDGES**

### **A. Note to the Judges**

To ensure that the mock trial experience is the best it can be for students, please familiarize yourself with the case materials as well as the rules of competition. Particular attention should be paid to the simplified rules of evidence. The students have worked hard for many months to polish their performances and are disappointed when judges are not familiar with the case materials.

Each courtroom will be assigned a panel of three judges:

- The presiding attorney will sit at the bench and will be responsible for conducting the trial, including ruling on objections.
- The other two judges will sit in the jury box and will have primary responsibility for evaluating and scoring student performances.

The judging panel will usually be comprised of two representatives from the legal field and one educator or community representative.

Please note that the mock trial competition differs from a real trial in the following ways:

1. Students are prohibited from making objections or using trial procedures not listed in the mock trial materials. Students should request a bench conference (to be held in open court from counsel table) if they think the opposing attorneys are using trial procedures outside the rules.
2. Students are limited to the information in the witness statements and fact situation. If a witness invents information, the opposing attorney may object on the grounds that the information is beyond the scope of the mock trial materials. The presiding judge may request a bench conference (to be held in open court from counsel table) and ask the students to find where the information is included in the case materials.
3. Bailiffs are the official timekeepers. The defense team is responsible for providing the bailiff (plaintiff/prosecution provides the clerk). Bailiffs time all phases of the trial *including the 15 minute judges' critique*. The plaintiff/prosecution team *may* provide a back-up timer (this curbs faulty timekeeping).
4. Students have been instructed to address their presentations to the judge and jury. The students will address the presiding judge as the judge in the case and the other judges as jurors since they are in the jury box.
5. Each trial round has been scheduled to be completed within two hours. To keep the competition on schedule, we ask you to keep within the time limits set out in *Rule 12*. **Do not allow judges' critiques to go overtime!**

## **B. Introductory Matters**

The presiding judge should handle the following introductory matters prior to the beginning of the trial:

1. Ask each side if it is ready for trial. Ask each side to provide each judge with a copy of its Team Roster, and one to opposing counsel. Ask each member of a team to rise and identify himself/herself by name and role. Students are to identify their team by their assigned letter designation and not by school name. Team rosters will be used by judges for note taking during the round.
2. If video or audio recorders are present, inquire of both teams whether they have approved the taping of the round.
3. Ask if there are people present in the courtroom who are connected with other schools in the competition (other than the schools competing in this courtroom). If so, they should be asked to leave. They may contact the Coordinator to determine the location of the courtroom in which their school is performing.
4. Remind spectators of the importance of showing respect for the competing teams. Judges may remove spectators who do not adhere to appropriate courtroom decorum.
5. Remind teams that witnesses are permitted to testify only to the information in the fact situation, their witness statements, and what can be reasonably inferred from the information.
6. Remind teams that they must complete their presentations within the specified time limits. The bailiff will signal you as the time for each segment of presentation runs out (3 and 1 minute warning and then 0 minute cards will be held up). At the end of each segment you will be stopped when your time has run out whether you are finished or not.

7. All witnesses must be called.
8. Only the following items may be offered as evidence at the trial:
  - Exhibit 1 OIA Bylaws (Portion of Article 14)
  - Exhibit 2 OIA Position Statement Form 14.13
  - Exhibit 3 Oregon Child Fatality Review Data Form
  - Exhibit 4 Toxicology Report
  - Exhibit 5 Poster (Girl)
  - Exhibit 6 Poster (Boy)
  - Exhibit 7 NFSHSA Brochure
  - Exhibit 8 Report of Race Times
  - Exhibit 9 Bank Records
  - Exhibit 10 Internet Printing Cover Sheet and Article

At the end of the round, the presiding judge **may** announce which team won based on the legal merits. This may NOT be the same team that won based on performance; **judges shall not inform the students of performance (what is recorded on the scoresheets) results.** Therefore, at the end of each round teams will not know which team won or lost the performance, but may know who won on the legal merits. This information may be provided to teams by the Coordinator in the week following the competition.

Finally, before the presiding judge begins, he or she should verify that that the Code of Ethical Conduct has been read and will be followed by all participants in the mock trial competition. Should there be a recess at any time during the trial, the communication rule (see third paragraph of Code of Ethical Conduct) shall be in effect.

### C. Evaluation Guidelines

All teams will compete in all three rounds. Teams are randomly matched for Round 1 and then power matched based on win/loss record; total number of ballots (which is the number of scoring judges' votes); and in Rounds 2 and 3, total number of points accumulated in each round.

All three judges will be given evaluation sheets to use to assist in making decisions in the trial. Judges are urged to use these evaluation sheets to keep track of each student's presentation in order to offer comments on each student's presentation during the debrief.

In addition to the evaluation sheets, judges will receive brightly colored score sheets. The score sheets must be filled out and given to the clerk to deliver to the scoring room **before** judges begin critiquing. Both sheets are confidential and should not be shared with any team members.

The following evaluation guidelines should be used to help you provide comments to the students during the debrief and determine the overall team presentation points:

An overall presentation score (1-10) must be awarded each team. This score, minus any penalty points, is the total team score that should be written on the bright-colored win/loss sheets to be turned in for scoring and matching purposes. The three judges do **not** need to assign the same number of presentation points to a team, although the points assigned should reflect each judge's decision as to winner and loser.

The following criteria should be used in determining **overall team presentation** points:

<b>1-2 pt</b>	<b>Not effective</b>	Unsure, illogical, uninformed, unprepared, ineffective communication skills.
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<b>3-4 pts Fair</b>	Minimally informed and prepared; passable performance but lack of depth in terms of knowledge of task and materials. Communication lacked clarity and conviction.
<b>5-6 pts Good</b>	Good, solid but not spectacular; can perform outside script but with less confidence; logic and organization adequate but not outstanding. Grasp of major aspects of case, but no mastery. Communications clear and understandable but could be more fluent and persuasive.
<b>7-8 pts Excellent</b>	Fluent, persuasive, clear, understandable; organized material and thoughts well and exhibited mastery of case and materials.
<b>9-10 Outstanding</b>	Superior in qualities listed in 7-8 above. Demonstrated ability to think on feet, poised under duress, sorted out essential from nonessential, and used time effectively to accomplish major objectives. Demonstrated unique ability to utilize all resources to emphasize vital points of trial. Team members were courteous, observed general courtroom decorum and spoke clearly and distinctly. All team members were involved in the presentation of the case and participated actively in fulfilling their respective roles, including the clerk and bailiff. The clerk and bailiff performed their roles so that there were no disruptions or delays in the presentation of the trial. Team members demonstrated cooperation and teamwork.

#### **D. Penalty Points**

Teams lose points when they:

1. Use procedures beyond the mock trial rules of evidence.
2. Go beyond the scope of the mock trial materials.
3. Do not follow mock trial rules in any other way.
4. Talk to coaches, non-performing team members or other observers. This includes breaks or recesses, if any should occur, in the trial: **mandatory 2-point penalty**. Frivolous complaints should not be filed. The regional coordinator and judge have discretion to determine whether a communication was harmful.
5. Do not call all witnesses: **mandatory 2-point penalty**.

Judges may assign the number of penalty points at their discretion except where otherwise indicated. If a violation has occurred, all judges **must** assign one or two penalty points; the number of penalty points may differ among judges, except in 4 and 5, above. Each team is rated on overall presentation using 1-10 points (no fractions). At least two of the three judges should agree on the winning team based on overall presentation.

*Note:* The behavior of teachers and attorney coaches may also impact the team's score.

**The judges' decision is final.**

#### **E. Tips for Critiquing**

Although students are anxious to hear how they did in all rounds of the competition, specific feedback is most important in the early rounds so that students have the opportunity to use your suggestions in their next rounds. Try not only to praise students but also to provide positive and constructive comments to help them improve. Each judge should offer a **few brief** comments. Providing one useful comment to a student is better than a generic, "well done" to all.

Because it is impossible for each of the three judges to offer comments to every team member within the 15-minute debrief time allotted, it is recommended that judges divide the critique as follows:

- the educator judge should critique the witnesses, bailiff, and clerk;
- the presiding judge should critique on trial strategy and overall presentation; and
- the other judge should critique the attorneys.

Suggested critique might include comments such as:

"The content of your opening statement was excellent, but practice telling the story without reading to the judges." *or*

"You asked good specific questions on direct, but try not to sound too rehearsed with your witness."

**The bailiff will time the critique.** The time allotted for critique is limited to 15 minutes total. When the bailiff holds up the "0" minutes card, the debrief is over. Once the debrief has concluded, the presiding judge should make certain that the courtroom is cleaned.

# APPENDICES



## Often Used Objections in Suggested Form

*Note: This exhibit is provided to assist students with the proper form of objections. It is NOT a comprehensive list of all objections. Permissible objections are those related to a rule in the mock trial material (examples below). Impermissible objections are those not related to mock trial rules (example: hearsay based on business records exception). That is to say, an objection must be based on a rule found in the Mock Trial materials, not additional ones even though they may be commonly used by lawyers in real cases.*

*The following objections are often heard in Mock Trials but do not represent an exhaustive list.*

**Note:** Objections during the testimony of a witness will be permitted only by the direct examining and cross-examining attorneys for that witness.

### 1. Leading Question

**Objection:** "Objection, Your Honor, counsel is leading the witness." (Opposing Attorney)

**Response:** "Your Honor, leading is permissible on cross-examination," or "I'll rephrase the question." For example, the question would not be leading if rephrased as: "Mr. Smith, where did you and Ms. Jones go that night?" (This does not ask for a yes or no answer.)

### 2. Relevance

**Objection:** "Your Honor, this question is irrelevant to this case."

**Response:** "Your Honor, this series of questions will show that Mrs. Smith's first husband was killed in an auto accident, and this fact has increased her mental suffering in this case."

### 3. Hearsay

**Objection:** "Objection, Your Honor, this is hearsay."

**Response:** "Your Honor, this is an exception/exclusion to the hearsay rule." (Explain applicable provisions.)

### 4. Personal Knowledge

**Objection:** "Your Honor, the witness has no personal knowledge of Harry's condition that night."

**Response:** "The witness is just generally describing her usual experience with Harry."

### 5. Opinions

**Objection:** "Objection, Your Honor, the witness is giving an opinion."

**Response:** "Your Honor, the witness may answer the question because ordinary persons can judge whether a car is speeding."

### 6. Outside the Scope of Mock Trial Materials/Rules

**Objection:** "Objection, Your Honor. The witness is testifying to information not found in the mock trial materials."

**Response:** "The witness is making a reasonable inference."

The presiding **judge** may call a bench conference for clarification from both attorneys.



## TEAM ROSTER – COORDINATOR’S COPY

*Please provide one copy to competition Coordinator at student orientation*

<b>School Name:</b>		<b>Team Letter Code:</b>	
<b>OPENING</b>			
<b>Prosecution/Plaintiff</b>		<b>Defense</b>	
<b>Direct</b>	<b>Witness</b>	<b>Cross</b>	
	Kelly Simon		
	Morgan Pearce		
	Lynn Roper, Ph.D.		
<b>Cross</b>		<b>Direct</b>	
	Terry Swift		
	Jamie Hager, Ed.D		
	Aubrey Brady		
<b>CLOSING</b>			
<b>Prosecution/Plaintiff</b>		<b>Defense</b>	
<b>Clerk</b>		<b>Bailiff</b>	
<b>Coaches (include addresses)</b>			



## TEAM ROSTER – PLAINTIFF SIDE

*Please provide each judge with a copy when representing the plaintiff*

<b>Team Letter Code:</b>		
<b>OPENING STATEMENT</b>		
<b>Plaintiff's attorney:</b>		
<b>Direct</b>	<b>Witness</b>	<b>Cross</b>
	Kelly Simon	
	Morgan Pearce	
	Lynn Roper, Ph.D.	
<b>Cross</b>		<b>Direct</b>
	Terry Swift	
	Jamie Hagar, Ed.D	
	Aubrey Brady	
<b>CLOSING</b>		
<b>Plaintiff's attorney:</b>		
<b>Clerk:</b>		
<b>General Comments:</b>		



## TEAM ROSTER – DEFENSE SIDE

*Please provide each judge with a copy when representing the defendants*

<b>Team Letter Code:</b>		
<b>OPENING STATEMENT</b>		
<b>Defendants' attorney:</b>		
<b>Direct</b>	<b>Witness</b>	<b>Cross examination</b>
	Kelly Simon	
	Morgan Pearce	
	Lynn Roper, Ph.D.	
<b>Cross</b>		<b>Direct examination</b>
	Terry Swift	
	Jamie Hagar, Ed.D.	
	Aubrey Brady	
<b>CLOSING ARGUMENTS</b>		
<b>Defendants' attorney:</b>		
<b>Bailiff:</b>		
<b>General Comments:</b>		



## Time Sheet

Plaintiff/Pros.—Team Code	V.	Defense—Team Code
<b>Opening Statement: 5 minutes per side</b>		
P	5 minutes	__ minutes used
D	5 minutes	__ minutes used
<b>Plaintiff/Pros.: Direct/Re-direct—20 minutes total</b>		
Start	20 minutes	
Witness #1:	time used ____ less	__ minutes __ minutes unused
Witness #2:	time used ____ less	__ minutes __ minutes unused
Witness #3:	time used ____ less	__ minutes __ minutes unused
<b>Defense: Cross/Re-cross—10 minutes total</b>		
Start	10 minutes	
P witness #1	time used ____ less	__ minutes __ minutes unused
P witness #2	time used ____ less	__ minutes __ minutes unused
P witness #3	time used ____ less	__ minutes __ minutes unused
<b>Defense: Direct/Re-direct—20 minutes total</b>		
Start	20 minutes	
D witness #1:	time used ____ less	__ minutes __ minutes unused
D witness #2:	time used ____ less	__ minutes __ minutes unused
D witness #3:	time used ____ less	__ minutes __ minutes unused
<b>Plaintiff/Pros.: Cross/Re-cross—10 minutes total</b>		
Start	10 minutes	
D witness #1	time used ____ less	__ minutes __ minutes unused
D witness #2	time used ____ less	__ minutes __ minutes unused
D witness #3	time used ____ less	__ minutes __ minutes unused
<b>Closing Argument: 5 minutes per side</b>		
Plaintiff/Pros.	time used ____ less	__ minutes __ minutes left for rebuttal
Defense	time used ____ less	__ minutes
<b>Judges' Debrief:</b>	<b>15 minutes total</b>	__ minutes used



**Rule 27 - Reporting Rules Violation Form**  
**For Team Members Inside the Bar**  
(performing in this Round)

This form must be returned to the trial coordinator along with the scoresheets of the Scoring Judges.

**Round** (circle one) **1 2 3**    **Pros/Plaintiff:** team code \_\_\_\_\_    **Defense:** team code \_\_\_\_\_

**Grounds for Dispute:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Initials of Team Spokesperson: \_\_\_\_\_ Time Dispute Presented to Presiding Judge: \_\_\_\_\_

**Hearing Decision of Presiding Judge** (circle one):    **Grant**    **Deny**    Initials of Judge: \_\_\_\_\_

**Reason(s) for Denying Hearing:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Initials of Opposing Team's Spokesperson: \_\_\_\_\_

**Presiding judge's notes from hearing and reason(s) for decision:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Presiding Judge



**Rule 30 - Reporting Rules Violation Form**  
**For Use by Persons Behind the Bar**  
(not performing in this Round)

*Non-Performing team members wishing to report a violation must promptly submit this form to competition coordinator*

**Date:** \_\_\_\_\_ **Time Submitted:** \_\_\_\_\_

**Person Lodging:** \_\_\_\_\_ **Affiliated With:** (Team Code) \_\_\_\_\_

**Grounds for Dispute:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Initials of Competition Coordinator: \_\_\_\_\_ Time Dispute Presented to Coordinator: \_\_\_\_\_

**Notes From Hearing:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Decision/Action of Coordinator:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Competition Coordinator

\_\_\_\_\_  
Date /Time of Decision



## Diagram of a Typical Courtroom



