

RULES OF THE TENNESSEE HIGH SCHOOL MOCK TRIAL COMPETITION¹

The Tennessee High School Mock Trial Competition is governed by the Rules of the Competition, the Rules of Procedure and the Tennessee High School Mock Trial Competition Rules of Evidence. Any clarification of these rules or case materials will be issued in writing to all participating teams by the Chair of the Mock Trial Committee. Any amendments to these rules will be made by the Mock Trial Committee with approval from the Mock Trial Long Range Planning Committee.

No local or district competition may alter the language of these rules. Some Rules of Evidence may not be relevant to the particular problem and may be disregarded.

All teams are responsible for the conduct of persons associated with their teams throughout the mock trial event. Please be advised that your team may be penalized for the conduct of persons associated with your team (i.e. guests, coaches, alternates), whether or not they are actual team members.

RULES OF THE COMPETITION

I. Rules of the Competition

A. The Problem

1. Rules (Rule 1)
2. Problem (Rule 2)
3. Witness Bound by Statements (Rule 3)
4. Unfair Extrapolation (Rule 4)
5. Gender of Witnesses (Rule 5)
6. Voir Dire (Rule 6)

B. The Trial

7. District Composition (Rule 7)
8. Team Composition (Rule 8)
9. Team Presentation (Rule 9)
10. Team Duties (Rule 10)
11. Swearing of Witnesses (Rule 11)
12. Trial Sequence and Time Limits (Rule 12)
13. Timekeeping (Rule 13)
14. Time Extensions (Rule 14)
15. Prohibited Motions (Rule 15)
16. Sequestration (Rule 16)
17. Bench Conferences (Rule 17)
18. Use of Podium (Rule 18)
19. Supplemental Material/Illustrative Aids (Rule 19)
20. Trial Communication (Rule 20)
21. Viewing a Trial (Rule 21)
22. Videotaping/Photography (Rule 22)

¹ As revised effective November 15, 2005. Revisions to this year's rules are noted by boldface and underline.

C. Judging

23. Decisions (Rule 23)
24. Composition of Panel (Rule 24)
25. Score Sheets/Ballots (Rule 25)
26. Completion of Score Sheets (Rule 26)
27. Score Sheet Availability (Rule 27)
28. Team Advancement (Rule 28)
29. Power Matching/Seeding (Rule 29)
30. Merit Decisions (Rule 30)
31. Effect of Bye/Default (Rule 31)

II. Rules of Procedure

A. Before the Trial

32. Team Roster (Rule 32)
33. Stipulations (Rule 33)
34. The Record (Rule 34)

B. Beginning the Trial

35. Jury Trial (Rule 35)
36. Standing During Trial (Rule 36)
37. Objection During Opening Statement/Closing Argument (Rule 37)

C. Presenting Evidence

38. Argumentative Questions (Rule 38)
39. Lack of Proper Predicate/Foundation (Rule 39)
40. Non-Responsive Witness (Rule 40)
41. Procedure for Introduction of Exhibits (Rule 41)
42. Use of Notes (Rule 42)
43. Redirect/Recross (Rule 43)

D. Closing Arguments

44. Scope of Closing Arguments (Rule 44)

E. Critique

45. The Critique (Rule 45)

III. Tennessee High School Mock Trial Competition Rules of Evidence

I. RULES OF THE COMPETITION

A. THE PROBLEM

Rule 1. Rules

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

Questions or interpretations of these rules are within the discretion of the Tennessee Bar Association Young Lawyers Division Mock Trial Competition Chair and Committee (“Mock Trial Chair and Committee”). Any amendments to these rules will be made by the Tennessee Bar Association Young Lawyers Division Mock Trial Competition Long Range Planning Committee. (“Mock Trial Long Range Planning Committee”).

Rule 2. The Problem

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

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

Rule 3. Witness Bound by Statements

Each witness is bound by the facts contained in his/her own witness statement, the statement of facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness’ statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 4, outside the scope of the problem.

If, in cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response 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.

Rule 4. 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.

Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation.

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 in a special objection, such as “unfair extrapolation” or “This information is beyond the scope of the statement of facts.”

Possible rulings by a judge include:

- a) No extrapolation has occurred;
- b) An unfair extrapolation has occurred;
- c) The extrapolation was fair; or
- d) Ruling is taken under advisement.

The decision of the presiding judge regarding extrapolations or evidentiary matters is final.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings.

Rule 5. Gender of Witnesses

All witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender.

Rule 6. Voir Dire

Voir dire examination of a witness is not permitted.

B. THE TRIAL

Rule 7. District Composition

Districts with between four (4) and eleven (11) teams actually competing during the district competition will be permitted to qualify one (1) team to the state competition; districts with between twelve (12) and twenty-three (23) teams actually competing in the district competition will be permitted to qualify two (2) teams to the state competition; and districts with twenty-four (24) or more teams actually competing during the district competition will be permitted to send three (3) teams to the state competition. A district with under four (4) teams competing in the district competition will be required to compete with a neighboring district. A school or other organization may have a maximum of two (2) teams considered in the calculation of the number of teams actually competing.

Rule 8. Team Composition

Teams must have six (6) members and may have up to (but no more than) twelve (12) members assigned to roles representing the Prosecution/Plaintiff and Defense/Defendant sides. For the purpose of providing funding to teams competing in the state competition, the Tennessee Bar Association will provide only four hotel rooms for each team and if additional rooms are needed due to the number of team members or for any other reason, the individuals, the school or local bar association (or some other person or organization) must bear the cost of these additional rooms. In addition, a team may have alternate members, but these members will not be funded to the state competition and can only compete if they are a substitute for a team member. A team at the National Championships may only be comprised of six (6) members and two (2) alternates. Thus, if your team prevails at the state competition, only eight (8) student team members will be funded to the National Championships. **Each team shall have a sponsor from their school or organization for the purpose of contacting teams about important information about the problem or for**

sending registration materials. Additionally, each team MAY enlist the assistance of one or more coaches. The coaches should be licensed attorneys or law students. The Tennessee High School Mock Trial Competition is organized, hosted and judged by members of the Tennessee Bar Association Young Lawyers Division (YLD). As a public service project of the YLD, there is no charge for teams to compete in the mock trial competition. As an “all volunteer” activity and to preserve a level playing field for all teams participating in the competition, coaches may NOT be compensated by their school or organization for their service. If CLE credit is ever offered for coaches, such CLE credit shall not be deemed compensation to the coaches. Additionally, it shall not be deemed compensation for a school or organization to reimburse a coach for their out of pocket expenses or mileage for travel to and from practices and the competition.

Rule 9. Team Presentation

A team must present both the Prosecution/Plaintiff and Defense/Defendant sides of the case using six team members for each side. Each side shall consist of three (3) lawyers and three (3) witnesses. If the Defense chooses not to call the defendant as one of its three witnesses, it shall have the opportunity to have someone acting as the defendant seated at counsel table.

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

Only in the case of an emergency occurring during a round of competition may a team participate with less than six. In such a case, a team may continue in the competition by making substitutions to achieve a two attorney/three witness composition. It is the responsibility of a team to notify the Mock trial Chair or a member of the Committee if an emergency arises.

Final determination of emergency, forfeiture, reduction of points, or advancement, will be made by the Mock Trial Chair and Committee.

Rule 10. Team Duties

Each team must call three witnesses and only three witnesses in the event that there are four or more potential witnesses. Witnesses must be called only by their own team and examined by both sides. Witnesses may not be recalled by either side.

Each of the three attorneys must conduct one direct examination and one cross examination. **However, if the case materials present four witnesses, of which each team must present only three, then each attorney shall conduct no more than two cross examinations.** One attorney shall present the opening argument and another will present the closing argument. No attorney shall conduct more than one cross examination.

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

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

Rule 11. Swearing of Witnesses

The following oath may be used before questioning begins:

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

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate all witnesses are assumed to be sworn, or the above oath will be conducted by (a) the presiding judge, (b) a bailiff, provided by the Mock Trial Coordinator, or (c) the examining attorney.

Rule 12. Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (4 minutes per side)
2. Direct and Redirect (optional) Examinations. (20 minutes per side)
3. Cross and Re-cross (optional) Examinations. (14 minutes per side)
4. Closing Argument (4 minutes per side)

The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; the Prosecution/Plaintiff may reserve up to 1 minute of its closing time for a rebuttal. The Prosecution/Plaintiff's rebuttal is limited to the scope of the Defense's closing argument.

Attorneys are not required to use the entire time allotted to each part of the trial. However, 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. Each team is permitted to have its own timekeeper, who may use timekeeping aids (i.e. stopwatch and time cards) and who will be permitted to sit in, or next to, the jury box, but should be behind and out of the way of the scoring judges; however, an official timekeeper will be assigned to each trial. It is the responsibility of a team to object to its adversary exceeding the time limits.

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.

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 or not to discount points in a category because of over-runs in time.

Rule 15. Prohibited Motions

All motions, other than those specifically provided for in the case materials, if any, shall not be allowed.

A motion for a recess may be used only in the event of an emergency, i.e. health emergency. To the greatest extent possible, team members are to remain in place. Should a recess be called, teams are not to communicate with any observers, coaches, or instructors regarding the trial.

Rule 16. Sequestration

Teams may not invoke the rule of sequestration.

Rule 17. Bench Conferences

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

Rule 18. Use of Podium

Participants may request from the presiding judge to move away from the podium for opening statement and closing argument and may request permission to approach the witness when warranted.

Rule 19. Supplemental Material/Illustrative Aids/Individual Attributes

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. Pointers, markers, etc. are not “illustrative aids.” No enlargements of the case materials will be permitted, unless specifically permitted in the case material stipulations; however, copies may be made for publication to the jury. Teams may NOT refer to the individual attributes of its team members (i.e. height, weight, hair color, gender, race) as a basis for **impeachment, credibility**, “reasonable doubt” or the innocence or guilt of the Defendant.

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

Rule 20. 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 recess time which may occur. Team members may, among themselves, communicate during the trial; however, no disruptive communication is allowed.

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.

Rule 21. Viewing a Trial

Team members, alternates, attorney/coaches, teacher-sponsors, and any other persons associated with a mock trial team are not permitted to view other teams in competition as long as their team remains in the competition.

Rule 22. Videotaping/Photography

Any team has the option to refuse participation in videotaping, tape recording, still photography, or media coverage, except during the championship round. Media coverage will be allowed by the

two teams in the championship round and any team's participation in this competition shall be construed as a release by that team to videotape the championship round and to replay that videotape, in whole or in part, on television, and to duplicate and make that videotape available to the general public. If a team videotapes a round, it shall make available to the opposing team a copy of the tape at the opposing team's expense.

C. JUDGING

The rules in this section pertain to the state competition. District competitions may be run differently, so you should consult with your district coordinator.

Rule 23. Decisions

All decisions of the judging panel are FINAL.

Rule 24. Composition of Panel

The judging panel will consist of at least three individuals. The composition of the judging panel and the role of the presiding judge will be at the discretion of the Mock Trial Chair and Committee as follows:

1. One scoring/presiding judge and two attorney scoring judges (all three of whom complete scoresheets);
2. One presiding judge and three attorney scoring judges (scoring judges only complete scoresheets); or
3. One scoring/presiding judge, one attorney scoring judges and one scoring bailiff (all three complete score sheets).

Rule 25. Score Sheets/Ballots

The term "ballot" will refer to the decision made by a scoring judge as to which team made the best presentation in the round. The term "score sheet" is used in reference to the form on which speaker and team points are recorded. Score sheets are to be completed individually by the scoring judges. Scoring judges are not bound by the rulings of the presiding judge. The team that earns the highest points on an individual judge's score sheet is the winner of that ballot. The team that receives the majority of the three ballots wins the round. The ballot votes determine the win/loss record of the team for power-matching and ranking purposes. While the judging panel may deliberate on any special awards (i.e., Outstanding Attorney/Witness) the judging panel should not deliberate on individual scores.

Rule 26. Completion of Score Sheets

Score sheets are to be completed in four steps:

1. Speaker Points - The scoring judge will record a number of speaker points (1-10) for each section of the trial.
2. Sub-Total - At the end of the trial, the scoring judge will total the sum of each team's individual speaker points and place this sum in the Sub-Total box.
3. Team Points - The scoring judge will give a number of points (1-10) to each team in the Team Points box. **NO TIE IS ALLOWED IN THE TEAM POINT BOX.**
4. Final Point Total - The scoring judge will add the sub-total and team points boxes to achieve a final point total for each team. **NO TIE IS ALLOWED IN THE FINAL POINT TOTAL BOX.** The team with the highest number of points in the Final Point Total box receives the ballot from that scoring judge.

Rule 27. Score Sheet Availability

Score sheets will not be made available to any person or team at any time during or following the state competition, with the exception of separate and optional comment sheets, if filled out and returned by a scoring judge. However, following the completion of the competition, complete rankings of all teams participating in the competition (1st place to last place) will be posted on the Tennessee Bar Association's Young Lawyer's Division website. Additionally, each team's coach and/or team sponsor will be provided with a summary sheet showing, for each round of the competition, the following information:

1. Team Rankings, separated by win/loss brackets
2. Total Ballots won by each team
3. Total Points awarded to each team

The above data will be provided for informational purposes ONLY. All scores and rankings shall be FINAL at the close of the competition and may not be challenged. This rule shall be optional at the local competition level. If any local competition wishes to provide the above data, the Mock Trial Committee will provide the local mock trial coordinator with the necessary software to create the summary sheets and will assist with this process.

Rule 28. Team Advancement

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

1. Win/Loss Record — equals the number of rounds won or lost by a team;
2. Total Number of Ballots — equals the number of scoring judges' votes a team earned in preceding rounds;
3. Total Number of Points Accumulated in Each Round;

Rule 29. 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 two schools emerging with the strongest record from the four rounds will advance to the final round. The first-place team will be determined by ballots from the championship round only.

Power matching will provide that:

1. Pairings for the first round will be at random;
2. Brackets will be determined by win/loss record. Sorting within brackets will be determined in the following order: (1) win/loss record; (2) ballots; (3) points; then (4) point spread. The team with the highest number of ballots in the bracket will be matched with the team with the lowest number of ballots in the bracket; the next highest with the next lowest, and so on until all teams are paired;
3. If there is an odd number of teams in a bracket, the team at the top of the next lower bracket will be moved into the bracket containing the odd number of teams.
4. The ultimate goal with power matching will be to maintain bracket integrity. However, the Mock Trial Chair (or local mock trial coordinator regarding local competitions) shall have the discretion to break bracket / power matching integrity, if necessary, to allow each team to have alternated between Prosecution / Plaintiff and Defense / Defendant at least once during the competition and to avoid two teams from the same school from competing against each other and, in some cases, from having a

team compete against another team from its district or a team from a prior round.

Rule 30. Merit Decisions

Judges and/or juries are not required to make a ruling on the legal merits of the trial, but are encouraged to do so. Judges/scorers may not inform the students of score sheet results.

Rule 31. Effect of Bye/Default

A “bye” becomes necessary when an odd number of teams are present for the tournament. For the purpose of advancement and seeding, when a team draws a bye or wins by default, the winning team for that round 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. The Mock Trial Chair may, if time and space allow, arrange for a “bye round” to allow teams drawing a bye to compete against one another in order to earn a true score.

II. RULES OF PROCEDURE

A. Before the Trial

Rule 32. Team Roster

Copies of the Team Roster Form must be completed and duplicated by each team prior to arrival at the competition site. Before beginning a trial, the teams must exchange copies of the team roster form. Witness lists should identify the gender of each witness so that references to such parties will be made in the proper gender. Copies of the team roster form should also be made available to the judging panel and presiding judge before each round.

Rule 35. Stipulations

When the Court asks the Prosecution/Plaintiff if it is ready to proceed with opening statements, the attorney assigned the opening statement should offer any stipulations into evidence. A copy of such stipulations should be submitted to the judge.

Rule 36. The Record

The stipulations and jury instructions will not be read into the record.

B. Beginning the Trial

Rule 37. Jury Trial

The case will be tried to a jury; arguments are to be made to judge and jury. Teams may address the scoring judge(s) located in the jury box as the jury.

Rule 38. 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 39. Objection 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 necessary during the opposing team’s closing, a student may, following the closing arguments, raise his/her hand to be recognized by the judge and

may say, “If I had been permitted to object during closing arguments, I would have objected to the opposing team’s statement that ____.” The presiding judge will not rule on this “objection”. Presiding and scoring judges will weigh the “objection” individually. No rebuttal by opposing team will be heard.

C. Presenting Evidence

Rule 38. Argumentative Questions

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

Rule 39. Lack of Proper Predicate/Foundation

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

Rule 40. Non-Responsive Witness

An attorney may object to a witness providing an on-responsive answer.

Rule 41. Procedure for Introduction of Exhibits

As an example, the following steps effectively introduce evidence:

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 Exhibit No. _____?”
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.
8. Offer the exhibit into evidence. “Your Honor, we offer Exhibit No.— into evidence at this time. The authenticity of this 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/is not admitted.”

Rule 42. 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 43. Redirect/Re-cross

Redirect and Recross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Federal Rules of Evidence (Mock Trial Version).

D. Closing Arguments

Rule 44. Scope of Closing Arguments

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

E. Critique

Rule 46. The Critique

The judging panel is allowed 15 minutes for debriefing. The timekeeper/bailiff will monitor the critique following the trial. The critique sessions will be limited to the 15 minutes total time allotted.

III. TENNESSEE HIGH SCHOOL MOCK TRIAL COMPETITION 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 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 or 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 Federal Rules of Evidence (Mock Trial Version) govern the Tennessee High School Mock Trial Competition.

Article I. General Provisions

Rule 101. Scope

These Federal Rules of Evidence (Mock Trial Version) govern the trial proceedings of the Tennessee 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 II. Judicial Notice

Not Applicable

Article III. Presumptions in Civil Actions and Proceedings

Not applicable

Article IV. Relevancy and its Limits

Rule 401. Definition of “Relevant Evidence”

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

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

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

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

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

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

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

- (1) Character of accused. — Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;
- (2) Character of victim. — Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;
- (3) Character of witness. — Evidence of the character of a witness as provided in Rules 607, 608 and 609.

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

Rule 405. Methods of Proving Character

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

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

Rule 406. Habit; Routine Practice

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

Rule 407. Subsequent Remedial Measures

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

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

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

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

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

Rule 411. Liability Insurance (civil case only)

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

Article V. Privileges

Rule 501. General Rule

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

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

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter *unless the witness has personal knowledge of the matter*. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses. (See Rule 3.)

Rule 607. Who may Impeach

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

Rule 608. Evidence of Character and Conduct of Witness

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

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

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

Rule 609. Impeachment by Evidence of Conviction of Crime (*this rule applies only to witnesses with prior convictions.*)

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

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

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

(d) Not applicable.

(e) Not applicable.

Rule 610. Religious Beliefs or Opinions

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

Rule 611. Mode and Order of Interrogation and Presentation

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

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

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

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

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

Rule 612. Writing Used to Refresh Memory

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

Rule 613. Prior Statements of Witnesses

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

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

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

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

Rule 702. Testimony by Experts

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

Rule 703. Bases of Opinion Testimony by Experts

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

Rule 704. Opinion on Ultimate Issue

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

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

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

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

- (a) **Statement.** — A “statement” is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.
- (b) **Declarant.** — A “declarant” is a person who makes a statement.
- (c) **Hearsay.** — “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
- (d) **Statements which are not hearsay.** — A statement is not hearsay if:
 - (1) **Prior statement by witness.** — The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is (A) inconsistent with the declarant’s testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant’s testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or
 - (2) **Admission by a party-opponent.** — The statement is offered against a party and is (A) the party’s own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the

subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a 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.

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

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

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

(2) Excited utterance. — A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

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

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

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

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

(8) Public records and reports.— Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted

by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

(17) Market reports, commercial publications.— Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

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

(21) Reputation as to character. — Reputation of a person's character among associates or in the community.

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

Rule 804. Hearsay Exceptions; Declarant Unavailable

(a) Definition of unavailability.

"Unavailability as a witness" includes situations in which the declarant—

- (1) testifies to a lack of memory of the subject matter of the declarant's statement; or
- (2) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity.

(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 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.

Rule 805. Hearsay within Hearsay

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

Rule 806. Attacking and Supporting Credibility of Declarant

When a hearsay statement, or a statement defined in Rule 801(d)(2), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any

evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

Rule 807. Residual Exception

A statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

ARTICLE X - Contents of Writing, Recordings and Photographs

Not applicable.

ARTICLE XI - Other

These rules may be known and cited as the Tennessee High School Mock Trial Competition Rules of Evidence (Mock Trial Version).