

KENTUCKY HIGH SCHOOL MOCK TRIAL RULES
(AMENDED 12/2/11)

RULES OF THE COMPETITION

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RULES OF THE COMPETITION

ADMINISTRATION

Rule 1.1. Rules

All trials are governed by the *Rules of the Kentucky High School Mock Trial Competition* and the *Federal Rules of Evidence (Mock Trial Version)*.

Questions or interpretations of these rules are within the discretion of the mock trial committee, whose decision is final.

Rule 1.2. Code of Conduct

The *Rules of Competition*, as well as proper rules of courthouse and courtroom decorum and security, must be followed. The mock trial committee possesses discretion to impose sanctions, including but not limited to disqualification, immediate eviction from the mock trial competition, and forfeiture of all fees and awards (if applicable) for any misconduct occurring while a team is present for the mock trial competition, for flagrant rule violations, and for breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge, or the mock trial program.

Rule 1.3. Emergencies

In the event of an emergency that causes a team to be unable to participate in any round, the team will forfeit all rounds from that point.

If, during a trial, a team member becomes ill or experiences another type of emergency, a student attorney shall ask to approach the bench to inform the Court. The presiding judge shall have discretion to declare an emergency and adjourn the trial for a short period of time to address the situation. If, after a short break, the team member with the emergency is unable to return to the trial, the team coach may substitute an alternate official team member to continue in the trial. (See also Rule 4.12.)

Rule 1.4. Student Timekeepers

Each team attending the Kentucky High School Mock Trial Competition is responsible for providing a timekeeper equipped with two stopwatches and a set of "Time Remaining" cards with the following designations to signal time: 20:00, 15:00, 10:00, 5:00, 4:00, 3:00, 2:00, 1:00, 0:40, 0:20, and STOP. Throughout the duration of the trial, a timekeeper may not communicate with his/her team in any way other than to display time remaining cards, unless directed by the presiding judge. (Also see Rules 3.2, 4.5, 4.6, Timekeeper's Responsibilities, Timekeeping Procedures, Time Card Use Table, and Timekeeping Sheet.)

THE PROBLEM

Rule 2.1. The Problem

The problem is an original fact pattern which may contain any or all of the following: statement of facts, indictment, stipulations, witness statements/affidavits, jury charge, and exhibits. Stipulations may not be disputed at trial. Witness statements may not be altered.

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

Rule 2.2. 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 2.3, "unfair extrapolation."

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

Rule 2.3. Extrapolations

A fair extrapolation is one that is neutral. An unfair extrapolation is one that materially affects the outcome of the case. 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.

Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. Attorneys for the opposing team may refer to Rule 2.3 in a special objection, such as "unfair extrapolation" or "This information is beyond the scope of the statement of facts."

Possible rulings by a judge include:

- a) No extrapolation has occurred;
- b) The extrapolation was fair;
- c) An unfair extrapolation has occurred; 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 shall rule in open court to clarify the course of further proceedings.

Rule 2.4. Gender of Witnesses

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

Rule 2.5. Voir Dire

Voir dire examination of a witness is not permitted.

TEAMS

Rule 3.1. Team Eligibility

Each public or private school in Kentucky may register up to two (2) teams in the competition. All team members must be enrolled in grades 9 - 12 in the registering school. The only exception to this is in the event an uneven number of teams register for the state high school tournament. For power matching to work most effectively so that no team draws a bye, an even number of competing teams is needed. In the event that an uneven number of teams register for the Kentucky High School Mock Trial Tournament, the winner of the Kentucky Middle School Mock Trial Tournament will be invited to compete as a guest participant in the first four rounds. However, this middle school team would not be permitted to compete in the Semifinal Round (if necessary) or in the Championship Round. Additionally, this middle school team would be expected to comply with the high school *Rules of Competition* and, for pairing purposes in Round 1 (random draw) and Rounds 2-4 (power matching), would not be paired to compete against a high school team for which this middle school is a feeder school. (Also see Rule 5.8)

TOURNAMENT FORMAT AND PAIRINGS

1. The entire Kentucky High School Mock Trial Tournament will be held on one weekend where all teams will participate in at least four rounds of competition. In order to determine the state champion, the teams that advance through the competition with the best record will compete in one or two additional rounds.
2. Teams will be matched randomly for the first round of the state competition. Teams must be prepared to represent either party since they will have to switch sides as they progress through the competition. Each team is guaranteed to do both sides of the case at least once. All rounds following Round One will be power matched.
3. All teams are highly encouraged to set up at least two practice rounds (scrimmages) with other schools prior to the state competition. Contact teacher coaches to set up your practice rounds.

Rule 3.2. Team Composition

Each team should have a teacher sponsor and an attorney coach. Only one practicing attorney or judge can be designated as the official attorney coach, although other local attorneys and judges may assist.

A team is composed of no less than six and no more than twelve students. For each round of competition, only six of the team members can participate and their participation shall be consistent with Rules 3.3 and 3.4. Any non-participating team members in that round are considered to be alternates and may not communicate with participating team members consistent with Rule 4.12.

Prior to the commencement of a trial round, a team may designate any team member to participate in a round so long as that team member is designated on the team roster. Once a trial round has commenced and the presiding judge has been seated, the substitution of a team member not designated on the roster for that trial round, i.e. an alternate, is permitted only under Rule 1.3 and is within the sole discretion of the presiding judge. *See also Rule 4.12.*

A list of the names of the team members and the timekeeper, along with the names of the school and coaches, must be submitted at the registration table upon arriving at the tournament. Once submitted, the names of the team members are final and may not be changed. At no time may a team for any reason substitute other persons for official team members.

Additionally, a person will be designated as the official timekeeper. That person need not be a team member. The official timekeeper must meet the requirements of Rule 1.4 as the team's **official timekeeper**. The timekeeper will keep time for his/her own team as well as his/her opponent. The student timekeepers will flash cards to both teams, showing the teams how much time they have. The timekeepers should know in advance when to stop and start the time. (See also Rules 4.5, 4.6, Timekeeper's Responsibilities, and Timekeeping Procedures.)

Rule 3.3. Team Presentation

Teams must present both the Prosecution/Plaintiff and Defense/Defendant sides of the case, using six team members in each trial round. For each trial round, teams shall use three students as attorneys and three students as witnesses.

Rule 3.4. Team Duties

Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct examination and one cross-examination; in addition, one will present the opening statement and another will present the closing argument. In other words, the eight attorney duties for each team will be divided as follows:

1. Opening Statement
2. Direct Examination of Witness #1
3. Direct Examination of Witness #2
4. Direct Examination of Witness #3
5. Cross-examination of Witness #1
6. Cross-examination of Witness #2
7. Cross-examination of Witness #3
8. Closing Argument (including Rebuttal) [Also see Rule 4.5]

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

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

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

Rule 3.5. Team Roster Forms

Copies of the Team Roster Forms for Prosecution/Plaintiff and Defense are provided in these materials. These forms must be completed and duplicated by each team prior to arrival at the tournament for each round of competition. Teams must be identified by the code assigned at registration. No information identifying team origin should appear on the form.

Before beginning a trial, the teams must exchange copies of the Team Roster Form. The Form should identify the gender of each witness so that references to such parties will be made in the proper gender. Copies of the Team Roster Form should also be made available to the judging panel and presiding judge before each round. Teams shall not knowingly disclose their place of origin to the presiding judge or any scoring judge.

THE TRIAL

Rule 4.1. Courtroom Setting

The Prosecution/Plaintiff team shall be seated closest to the jury box. If the jury box is located in the center, the Prosecution/Plaintiff shall be seated to the left while facing the judge. No team shall rearrange the courtroom without prior permission of the mock trial coordinator or judge.

Rule 4.2. Stipulations

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

Rule 4.3. Reading Into the Record Not Permitted

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

Rule 4.4. Swearing of Witnesses

The following oath may be used before questioning begins:

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

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate all witnesses are assumed to be sworn, or the above oath will be conducted by the presiding judge. The presiding judge may swear the witnesses individually or as a group.

Rule 4.5. Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (Maximum of 5 minutes per side)
2. Direct and Redirect (optional) Examination (Maximum of 25 minutes per side)
3. Cross and Recross (optional) Examination (Maximum of 20 minutes per side)
4. Closing Argument (Maximum of 5 minutes per side)

The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; the Prosecution/Plaintiff may reserve a portion of its closing time for a rebuttal. The Prosecution/Plaintiff need not request or state that it is reserving rebuttal time. The Prosecution/Plaintiff's rebuttal is limited to the scope of the Defense/Defendant's closing argument.

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

Rule 4.6. Timekeeping

(a) Each team is required to have one official timekeeper for that team. This timekeeper must meet the requirements of Rule 1.4. Timekeepers are responsible for fairly and accurately keeping and reporting the time during the trial presentation and during any disputes. During the rounds of the competition, timekeepers are to act as a neutral entity. Timekeepers are not to communicate with their respective teams during the course of the trial presentation, recesses, or during any dispute procedure, except to display the time remaining cards and indicate (as directed by the presiding judge) how much time is remaining during a particular part of the trial.

(b) Time limits are mandatory and will be enforced. Time runs from the beginning of the witness examination, opening statement or closing argument until its conclusion. Introduction of counsel or witnesses prior to the opening statement shall not be included in the time allotted for opening statements. However, if counsel or witnesses are introduced once the opening statement has commenced, such time shall be included in the time allotted for the opening statement.

Timing starts only when each attorney begins to speak (i.e. when the attorney actually says the first word of his or her opening, closing, or examination question – examples include but are not limited to: “May it please the court...,” or “Your Honor, Ladies and Gentlemen of the jury...” [for openings/closings] or “Please state your name for the court...” [for examination question]).

Timing will not start when an attorney responds to a presiding judge's inquiry as to whether or not that side is ready to proceed, asks for permission to reserve time for a rebuttal, or asks permission to use/move a podium.

Timing stops during objections. Timing stops at the moment an attorney says, “I object...” Timing begins again after the ruling by the presiding judge and the **examining attorney says the first word to continue examination. Time for objections, questioning from the judge, for pre-trial or bench conferences, 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**.

(c) Timekeepers in each trial will work together to ensure that accurate time for both teams is being kept. Timekeepers should display the applicable “time-remaining” cards simultaneously for each team, and will notify the presiding judge that “TIME” has expired at the end of each trial segment (as listed in Rule 4.5) by showing the “STOP” time card. (See also Rule 3.2; *Timekeeper's Responsibilities*, *Timekeeping Procedures*, *Time Card Use Table*, and *Timekeeping Sheet*.)

Time discrepancies: At the end of each task during the trial presentation (i.e., at the end of each opening, at the end of each witness examination, at the end of each cross-examination, and at the end of each closing argument), if there is more than a 15-second discrepancy between the teams' timekeepers, the timekeepers must notify the presiding judge of the discrepancy. The presiding judge will then rule on the discrepancy, the timekeepers will synchronize their stopwatches accordingly, and the trial will continue. No time disputes will be entertained after the trial concludes. The decisions of the presiding judge regarding the resolution of time disputes are final.

Rule 4.7. Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the scoring judges may determine individually whether or not to discount points in a category because of the over-runs in time.

Rule 4.8. Motions Prohibited

The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission.

Rule 4.9. Sequestration

Teams may not invoke the rule of sequestration.

Rule 4.10. Bench Conferences

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

Rule 4.11. Supplemental Material; Costumes

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

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

Rule 4.12. Trial Communication

Coaches, teachers, alternates, and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any emergency recess which may occur, except in an emergency situation within the discretion of the presiding judge. (See also Rule 1.3.) Team members may, among themselves, communicate during the trial; however, no disruptive communication is allowed. Signaling of time by the teams' timekeepers shall not be considered a violation of this rule.

Coaches, teachers, alternates, and observers must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar and communicate with each other. Anyone disrupting the court may be removed by the presiding judge or AOC personnel.

Rule 4.13. Viewing a Trial

Team members, alternates, attorney coaches, teacher sponsors, and any other persons directly associated with a mock trial team, except for those authorized by the AOC, are not allowed to view other teams'

performances in any competition, so long as their team remains in the competition. **No person shall display anything that identifies their place of origin while in the courtroom.**

Rule 4.14. Videotaping/Photography

Any team has the option to refuse participation in videotaping, tape recording, and still photography by opposing teams. Photographers at the request of the AOC may photograph any trial. Media coverage will be allowed.

Rule 4.15. Jury Trial

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

Rule 4.16. Standing During Trial

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

Rule 4.17. Objections During Opening Statement/Closing Argument

No objections may be raised during opening statements or during closing arguments. If a team believes an objection would have been proper during the opposing team's opening statement or closing argument, one of its attorneys may, following the opening statement or closing argument, stand to be recognized by the judge and may say, "If I had been permitted to object during opening statement/closing argument, 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 the opposing team will be heard.

Rule 4.18. Objections

1. **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.
2. **Lack of Proper Predicate/Foundation:** Attorneys shall lay proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.
3. **Assuming Facts Not in Evidence:** Attorneys may not ask a question that assumes unproved facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by evidence (sometimes called a "hypothetical question").
4. **Questions Calling for Narrative or General Answer:** Questions must be stated so as to call for a specific answer. (Example of improper question: "Tell us what you know about this case.")
5. **Non-Responsive Answer:** A witness' answer is objectionable if it fails to respond to the question asked.
6. **Repetition:** Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

Teams are not precluded from raising additional objections which are available under the *Federal Rules of Evidence (Mock Trial Version)*.

Rule 4.19. Reserved.

Rule 4.20. Procedure for Introduction of Exhibits

As an example, the following steps effectively introduce evidence:

1. All evidence shall be pre-marked as exhibits.
2. Show the exhibit to opposing counsel.
3. Ask for permission to approach the witness. "Your honor, may I approach the witness with what has been marked for identification purposes as Exhibit No. ___?"
4. Ask the witness to identify the exhibit. "I now hand you what has been marked as Exhibit No. ___ for identification. Would you identify it please?" Witness should answer to identify only.
5. Ask the witness a series of questions that are offered for proof of the admissibility of the exhibit. These questions lay the foundation or predicate for admissibility, including questions of the relevance and materiality of the exhibit.
6. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. ___ into evidence at this time. The authenticity of this exhibit has been stipulated."
7. 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.)
8. Opposing Counsel: "No, Your Honor," or "Yes, Your Honor." If the response is "yes," the objection shall be stated for the record. Court: "Is there any response to the objection?"
9. Court: "Exhibit No. ___ (is/is not) admitted." If admitted, questions on content may be asked.

Rule 4.21. Use of Notes

Although attorneys may use notes in presenting their cases, the use of pre-written notes is discouraged and shall result in a scoring deduction. However, notes that are written by an attorney during the course of the trial may be used without penalty. 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. Trial materials such as exhibits and witness statements are not considered notes and may be used freely during the trial. The use of laptops or other electronic devices is prohibited.

Rule 4.22. Redirect/Recross

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)*.

Rule 4.23. Scope of Closing Arguments

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

Rule 4.24. The Critique (Optional for teams)

All completed score sheets should be sent to the tabulation room immediately following the closing arguments. After this, if one or both teams request a private critique, the presiding judge may conduct this in a jury room or empty courtroom beginning with the team representing the prosecution/plaintiff. A team that elects to participate may choose to send to the critique both their coaches and students or to send their coaches only. Such a critique is not required but may be provided if time permits, space is available, and a request is made by one or both teams. All critiques are to be limited to a maximum of **10 minutes** per team. The purpose of such a debriefing is to suggest ways a team can improve as it advances through the tournament. The judge may not inform the students of score sheet results. **There is no critique following the fourth round.**

Rule 4.25. Offers of Proof

No offers of proof or avowal may be requested or tendered.

JUDGING AND TEAM ADVANCEMENT

Rule 5.1. Finality of Decisions

All decisions of the judging panel are FINAL.

Rule 5.2. Composition of Judging Panels

The judging panel will consist of at least three individuals. The composition of the judging panel and the role of the presiding judge will be at the discretion of the mock trial committee, with the same format used throughout the competition, as follows:

1. One presiding judge and three scoring judges (scoring judges only complete score sheets);
or
2. One presiding judge and two scoring judges (all three of whom complete score sheets).

At the discretion of the mock trial committee, the Semifinal Round (if necessary) and the Championship Round may have a larger panel. All presiding and scoring judges receive the mock trial case in advance.

Rule 5.3. Score Sheets/Ballots

The term “ballot” will refer to the decision made by a scoring judge as to which team made the best presentation in the round. The term “score sheet” is used in reference to the form on which 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. The judging panel should not deliberate about individual scores. (See sample *Score Sheet, Explanation of the Performance Ratings Used on the Score Sheet*, and *Criteria for Scoring & Performance Ratings*.)

***Scoring shall be on knowledge, application, and performance, not on outcome.** Scoring shall be based on the knowledge and application of the student witnesses and attorneys. Scores should not be based on the merits or outcome of the case as it would be in an actual trial.

Rule 5.4. Completion of Score Sheets

Each scoring judge shall record a number of points (1-10) for each presentation of the trial. No decimal or fractional points may be used. At the end of the trial, each scoring judge shall total the sum of each team's individual points and place this sum in the Column Totals box. No tie is allowed in the Column Totals box. (See sample *Score Sheet, Explanation of the Performance Ratings Used on the Score Sheet*, and *Criteria for Scoring & Performance Ratings*.)

Point people assigned to each courtroom should collect two types of documents at the end of each trial: (1) a score sheet from each scoring judge which shows each team’s total points [no point ties are allowed], and (2) two team rosters from the presiding judge and each scoring judge on which the judge has circled names of the outstanding witness and the outstanding attorney from each team for that round [Rounds 1-4 only].

Rule 5.5. Team Advancement and Determination of Final Rankings

For purposes of advancement during the tournament, teams will be ranked based on the following criteria in the order listed:

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

*If a Semifinal Round is necessary due to there being 3 undefeated teams after Round 4, the top-ranked team from that group will receive a bye and advance to the Championship Round. (Note: If the two top-ranked teams are tied after considering all criteria listed in Rule 5.5, then a coin toss by the Mock Trial Committee will be held to determine which team receives the bye.) The second- and third-ranked teams in that group will compete in a Semifinal Round with the winner advancing to the Championship Round and the loser earning a third-place ranking for the tournament. (Also see Rule 5.6.)

For purposes of determining the final team rankings at the end of the tournament, the following procedures will be used:

- a. The winner of the Championship Round will be ranked #1 and the runner-up will be ranked #2.
- b. Beginning with rank #3 (unless a semi-final round is necessary, in which case it will begin with rank #4), all other teams who have a 3-0 win/loss record after Round 3 will be ranked in order according to ballots/points/point spread (total number of ballots followed by total number of points accumulated in each round followed by point spread against opponents).
- c. Other team rankings will follow those above based on each team's win-loss record/ballots/points/point spread at the end of four rounds of competition.

Rule 5.6. 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 (with consideration of side constraints). The two teams emerging with the strongest record will advance to the final (championship) 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. All teams are guaranteed to present each side of the case at least once; bracket integrity in power matching will supersede alternate side presentation;
3. Brackets will be determined by win/loss record with consideration of side constraints. Sorting within brackets will be determined in the following order: (1) win/loss record; (2) side constraints; (3) ballots; (4) total points; then (5) 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 [with consideration of side constraints]; 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 top of that bracket will be matched with the top team from the next lower bracket;
5. Teams will not meet the same opponent twice unless both reach the championship round.

After Round 4 is completed, if only two teams have a 4-0 win-loss record, those two teams will advance directly to the Championship Round. However, if three schools have a 4-0 win/loss record after four rounds of competition, a Semifinal Round will be necessary between the second- and third-ranked teams to determine the finalist that will advance to meet the first-ranked team in the state Championship Round. The team that does NOT advance will appear third in the over-all tournament rankings.

Rule 5.7. Selection of Sides for Semifinal Round (if necessary) and Championship Round

In determining which team will represent which side in the Semifinal Round (if necessary) and the Championship Round, the following procedure will be used:

1. The team with the letter/numerical code which comes first will be considered the "Designated Team."
2. The coin will be tossed by a designee of the mock trial committee.

3. If the coin comes up heads, the Designated Team shall represent the prosecution/plaintiff in the Championship Round. If the coin comes up tails, the Designated Team shall represent the defense/defendant.

Rule 5.8. Odd Number of Teams Participating in Tournament

For power matching to work most effectively so that no team draws a “bye,” an even number of competing teams is needed. In the event that an uneven number of teams register for the Kentucky High School Mock Trial Tournament, the winner of the Kentucky Middle School Mock Trial Tournament will be invited to compete as a guest participant in the first four rounds. However, this middle school team would not be permitted to compete in the Semifinal Round (if necessary) or in the Championship Round. Additionally, **this middle school team** would be expected to comply with the high school *Rules of Competition* and, **for pairing purposes in Round 1 (random draw) and Rounds 2-4 (power matching), would not be paired to compete against a high school team for which this middle school is a feeder school.** With this “feeder school” exception, all other power matching rules found in Rule 5.6 would apply to the participating middle school team. (Also see Rule 3.1.)

In the event of a circumstance resulting in an odd number of competing teams, a “bye” becomes necessary and the following procedure will apply:

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

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

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

Rule 5.9. Awards

1. **Competition Awards** - These will be presented to the ten teams with the best record in the tournament.
2. **Sportsmanship Award** - This award will be presented to the one team that is judged to have best demonstrated sportsmanlike conduct (fairness, courtesy, respect for one’s opponent, graciousness in winning or losing) throughout the tournament rounds. It will be determined by a vote of the participating teams and the Mock Trial Committee.
3. **Team Outstanding Attorney and Outstanding Witness Awards** - At the end of each trial in Rounds 1-4, all members of the judging panel will identify on each team roster the names of one student attorney and one student witness who were judged to be most outstanding from that team. These selections will not be made public at that time. Following the completion of Round 4, a certificate will be presented to the one student attorney and one student witness from each team who were most often identified as being outstanding by members of the judging panels.
4. **Championship Round Outstanding Attorney and Outstanding Witness Awards** – At the end of the Championship Round, the judging panel will consider the quality of the performances of the six witnesses and six attorneys in the trial. Each member of the judging panel will then select the name of one attorney and one witness who gave the most outstanding performance during that

trial. Based on those selections, one Championship Round Outstanding Attorney Award and one Championship Round Outstanding Witness Award will be presented to the student named most often in each category. Award recipients may come from either team, and their selection is unrelated to the evaluation of over-all team performance.

DISPUTE RESOLUTION

Rule 6.1. Objecting to a Rules Violation

Disputes which occur within the bar must be filed with the presiding judge immediately after the trial ends. If any team believes that a substantial rules violation has occurred, one of its student attorneys must indicate that the team intends to file a dispute. The student may communicate with participating team members before lodging the notice of dispute. The presiding judge shall rule on the matter. Any alleged violation which is not brought to the attention of the presiding judge in the above manner is waived. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke the dispute procedure.

Rule 6.2. Reserved

Rule 6.3. Effect of Violation on Score

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

Rule 6.4. Reserved

(Amended 8/5/11)

**FEDERAL RULES OF EVIDENCE
(Mock Trial Version)**

In American trials, complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the 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 rules they think appropriate.

ARTICLE I. GENERAL PROVISIONS

Rule 101. Scope

These rules govern proceedings in the *Kentucky High School Mock Trial Competition*.

Rule 102. Purpose and Construction

These Rules are intended to ensure 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

Rule 302. Applicability of State Law in Civil Actions and Proceedings

In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which State law supplies the rule of decision is determined in accordance with State law.

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 alleged victim.** Evidence of a pertinent character trait of the alleged 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 alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the aggressor;
- (3) **Character of witness.** Evidence of the character of a witness as provided in Rules 607, 608 and 609.

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

Rule 405. Methods of Proving Character

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

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

Rule 406. Habit; Routine Practice

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

Rule 407. Subsequent Remedial Measures

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

Rule 408. Compromise and Offers to Compromise

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

another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct investigation or prosecution.

Rule 409. Payment of Medical or Similar Expenses

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

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

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

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

However, such a statement is admissible (1) 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 (2) 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 evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses. (See Rule 2.2.)

Rule 607. Who May Impeach

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

Rule 608. Evidence of Character and Conduct of Witness

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

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

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

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

(a) **General Rule.** -- For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused has been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was punishable by death or imprisonment of one year or more, 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 of one year or more, or (2) the conviction has been the subject of a pardon, other equivalent procedure based on a finding of innocence.

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

(e) Not applicable.

Rule 610. Religious Beliefs or Opinions

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

Rule 611. Mode and Order of Interrogation and Presentation

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

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

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

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

(d) **Redirect/Recross.** *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.*

(e) **Permitted Motions.** The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission.

Rule 612. Writing Used to Refresh 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

(a) **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.

(b) **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. Basis of Opinion Testimony by Experts

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

Rule 704. Opinion on Ultimate Issue

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

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

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

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

ARTICLE VIII. HEARSAY

Rule 801. Definitions

The following definitions apply under this article:

(a) **Statement.** 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 or preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, associations, profession, occupation, and calling of every kind, whether or not conducted for profit.

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

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

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

Rule 804. Hearsay Exceptions, Declarant Unavailable

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

- (1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement; or
- (2) persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so; or
- (3) testifies to a lack of memory of the subject matter of the declarant’s statement; or
- (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
- (5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant’s attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant’s attendance or testimony) by process or other reasonable means.

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

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

- (1) **Former testimony.** Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.
- (2) **Statement under belief of impending death.** In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant’s death was imminent, concerning the cause or circumstances of what the Declarant believed to be impending death.
- (3) **Statement against interest.** A statement which was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
- (4) **Statement of personal or family history.** (A) A statement concerning the declarant’s own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other’s family as to be likely to have accurate information concerning the matter declared.

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

Rule 805. Hearsay within Hearsay

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

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION -- Not applicable

ARTICLE X. CONTENTS OF WRITING, RECORDINGS AND PHOTOGRAPHS -- Not applicable

ARTICLE XI. OTHER

Rule 1103. Title.

These rules may be known and cited as the *Federal Rules of Evidence (Mock Trial Version)*.

Last Revision: 8/5/11

Kentucky High School Mock Trial Tournament

2012 TEAM ROSTER FORM:

DEFENSE

TEAM CODE: _____

Round (circle one): 1 2 3 4 Championship

DEFENSE TEAM Name of Student Attorneys (input student's name)	Tasks Performed	Witnesses Examined (input <i>witness</i> name)
1) _____	Opening Direct Cross	On Direct: _____ On Cross: _____
2) _____	Direct Cross	On Direct: _____ On Cross: _____
3) _____	Closing Direct Cross	On Direct: _____ On Cross: _____

Witnesses may be called in any order.

DEFENSE TEAM Name of Student Witnesses (input student's name)	Gender of Witness (circle one)	Witness Role to be Portrayed
_____	M F	Morgan Smith
_____	M F	Chief Casey Reardon
_____	M F	Carson Rawlins

OFFICIAL TIMEKEEPER: _____ (timekeeper may not communicate with team during round)

Official Team Member(s) NOT participating in this Round:

These team members must sit outside the bar and may not communicate with competing team members during the round.

Team roster forms are to be duplicated and completed by each team prior to each round and presented to the Presiding Judge (1), Scoring Judges (3), and opposing counsel (1) before the round begins (5 per trial). Your team must be identified only by your TEAM CODE.

Kentucky High School Mock Trial Tournament

2012 TEAM ROSTER FORM:

PROSECUTION

TEAM CODE: _____

Round (*circle one*): 1 2 3 4 Championship

PROSECUTION TEAM Name of Student Attorneys (input student's name)	Tasks Performed	Witnesses Examined (input <i>witness</i> name)
1) _____	Opening Direct Cross	On Direct: _____ On Cross: _____
2) _____	Direct Cross	On Direct: _____ On Cross: _____
3) _____	Closing Direct Cross	On Direct: _____ On Cross: _____

Witnesses may be called in any order.

PROSECUTION TEAM Name of Student Witnesses (input student's name)	Gender of Witness (circle one)	Witness Role to be Portrayed
_____	M F	Detective Dusty Hon
_____	M F	Jamie Grubb
_____	M F	Jordan Rose

OFFICIAL TIMEKEEPER: _____ (timekeeper may not communicate with team during round)

Official Team Member(s) NOT participating in this Round:

These team members must sit outside the bar and may not communicate with competing team members during the round.

Team roster forms are to be duplicated and completed by each team prior to each round and presented to the Presiding Judge (1), Scoring Judges (3), and opposing counsel (1) before the round begins (5 per trial). Your team must be identified only by your TEAM CODE.

Kentucky High School Mock Trial Tournament

Explanation of the Performance Ratings Used on the Score Sheet

(See Rules 5.3, 5.4, Criteria for Scoring and Performance Ratings, and Score Sheet)

Individual participants will be rated on a scale of 1 – 10 points, according to their roles in the trial. The Scoring Judge is scoring **individual performance** in each category. The scoring judge is NOT scoring the legal merits of the case.

Scoring Judges may individually consider penalties for violation of the Rules of the Competition. Penalties would reduce point awards in the appropriate performance categories below. Penalties will not be indicated separately on the score sheet.

In Rounds 1-4, judges may recognize outstanding individual presentations by selecting one OUTSTANDING ATTORNEY and one OUTSTANDING WITNESS per round per team. Each judge determines individually which student will receive his/her vote.

Points	Performance	Criteria for Evaluating Student Performance
1 - 2	Not Effective	Unsure of self, illogical, uninformed, not prepared, speaks incoherently, definitely ineffective in communication.
3 - 4	Fair	<i>Minimally</i> informed and prepared. Performance is <i>passable</i> , but lacks depth in terms of knowledge of task and materials. Communication lacks clarity and conviction.
5 - 6	Good	Good, solid, but less than spectacular performance. Can perform outside of written notes, but with less confidence than when using written notes. Logic and organization are adequate, but not outstanding. Grasps major aspects of the case but does not convey mastery of it. Communications are clear and understandable, but could be stronger in fluency and persuasiveness.
7 - 8	Excellent	Fluent, persuasive, clear and understandable. Organizes materials and thoughts well and exhibits mastery of the case and materials. Thinks quickly and spontaneously. Does not read from notes that were prepared before trial.
9 - 10	Outstanding	Superior qualities listed for 7-8 points performance. Additionally thinks well on feet, is logical, and keeps poise under duress. Can sort essential from nonessential and use time effectively to accomplish major objectives.

The team with the higher number of points shall win the ballot; the team winning the majority of the ballots shall win the round.

Scoring Judges are reminded to tally all scores, check totals closely, and sign the score sheet before returning the score sheet to the appropriate tournament official.

Criteria for Scoring & Performance Ratings

CRITERIA FOR SCORING A TRIAL ROUND

The following criteria should be considered by scoring judges during the course of a team's trial presentation. Scoring judges should consider "5" the average point award. All points assessed in a trial round are subjective.

Opening Statement

- Provided a case overview
- Identified the theme/theory of the case
- Mentioned the key witnesses
- Provided a clear and concise description of their team's side of the case
- Stated the relief requested
- Discussed the burden of proof
- Presentation was non-argumentative
- Points shall be deducted for use of notes, except for notes made during the course of the trial

Direct Examinations (Student Attorneys)

- Properly phrased questions – non-leading
- Used proper courtroom procedure
- Demonstrated understanding of facts, issues, and law
- Used case theme/theory appropriately/effectively during line of questioning
- Handled objections appropriately and effectively and did not overuse objections
- Did not ask questions that called for an unfair extrapolation from the witness
- Demonstrated an understanding of the *Federal Rules of Evidence (Mock Trial Version)*
- Handled physical evidence appropriately and effectively (if applicable)
- Points shall be deducted for use of notes, except for notes made during the course of the trial

Cross-Examinations (Student Attorneys)

- Properly phrased questions – leading
- Effective questioning
- Properly impeached witness (if applicable)
- Handled objections appropriately and effectively
- Did not overuse objections
- Used various techniques, if necessary, to handle a non-responsive witness
- Demonstrated an understanding of the *Federal Rules of Evidence (Mock Trial Version)*
- Handled physical evidence appropriately and effectively (if applicable)
- Points shall be deducted for use of notes, except for notes made during the course of the trial

Witness Performance

- Credible portrayal of character

- Showed understanding of the facts of the case
- Sounded spontaneous, not memorized
- Poised and observed appropriate courtroom decorum
- Avoided unnecessarily long and/or non-responsive answers on cross-examination
- Points should be deducted for the use of unfair extrapolations

Closing Argument

- Theme/theory continued in closing argument
- Summarized the evidence
- Emphasized the supporting points of their own case and damaged the opponent's case
- Concentrated on the important, not the trivial
- Applied the applicable law
- Discussed burden of proof
- Responded to any questions from the judge with poise (if applicable)
- Overall, the closing argument was persuasive
- Points shall be deducted for use of notes, except for notes made during the course of the trial

Kentucky High School Mock Trial Tournament

Timekeeper's Responsibilities

(See Rules 1.4, 3.2, 4.5, 4.6, and 4.7)

- Each team is responsible for reviewing the following procedural information and Rules 1.4, 4.5, and 4.6 outlining the timekeeper's responsibilities for keeping time accurately and fairly throughout the state tournament.
 - **WORKING TOGETHER as a "neutral timing team,"** timekeepers from both teams (a) will ensure that accurate time for both teams has been kept; (b) will show "time-remaining" cards simultaneously to both teams; and (c) will notify the presiding judge that "TIME" has expired at the end of each segment of the trial by showing the "STOP" time card. The four trial segments as defined in Rule 4.5, Trial Sequence and Time Limits, are as follows: (1) Opening Statement (maximum of 5 minutes per side); (2) Direct and Redirect Examination (maximum of 25 minutes per side); (3) Cross and Recross-examination (maximum of 20 minutes per side); and (4) Closing Argument (maximum of 5 minutes per side).
 - Each team is responsible for training at least one student to serve as the team's official timekeeper.
 - **ALL TEAMS** are to bring to the state tournament:
 - **Two (2) STOP WATCHES** (one for keeping time for the Prosecution/Plaintiff side and one for keeping time for the Defense side, regardless of which side your team is presenting in a given round) – **required**
 - A trained **OFFICIAL TIMEKEEPER** – *required*
 - Clipboard for the timekeeper – *optional*
 - Two pencils
 - One set of "Time-Remaining" Cards with the following designations to signal time: 20:00, 15:00, 10:00, 5:00, 4:00, 3:00, 2:00, 1:00, 0:40, 0:20, and STOP.
 - Time Card Use Table (found in these materials)—should duplicate one copy
 - Timekeeping Sheet (found in these materials)—should duplicate 4-6 copies
- No stop watches, clipboards, or pencils will be available from the mock trial coordinator at the competition site.**
- All teams must use the "Time Remaining" cards that are described in Rule 1.4 and NO others. Time intervals may not be altered in any way.
 - Teams and their official timekeepers are responsible for being proficient in the timekeeping responsibilities. The team's timekeeper must be familiar with the trial sequence, and is encouraged to have practiced completing the timekeeping sheet during team scrimmages or practice rounds before the tournament begins.
 - In each trial, both teams' timekeepers will sit in the front row of the jury box and keep time for both teams.

Timekeeping Procedures

- I. **BEFORE THE TRIAL** (See information in *Timekeeper's Responsibilities* in these materials.)
- II. **DURING THE TRIAL**
 - A. Timekeepers play an essential role during a mock trial competition round and therefore must work together as a neutral "timekeeping team" to ensure that time is kept accurately and fairly for both sides in the round.
 - B. Enter the Round Number and Team Codes in the spaces provided at the top of the Timekeeping Sheet. Arrange your stopwatches, time cards, and Time Card Use Table.
 - C. Keep time during the trial, remembering the following:
 1. Use one stopwatch for each side – PROSECUTION on your left and DEFENSE on your right.
 2. **RESET STOPWATCH TO ZERO ONLY** at the following times:
 - a. at the beginning of each side's opening statement;
 - b. at the beginning of each side's direct examination
 - c. at the beginning of each side's cross-examination; and,
 - d. at the beginning of each side's closing argument
 3. **DO NOT** reset stopwatch to zero at any other time.
 - a. **DO NOT** reset stopwatch to zero at the end of direct and cross-examinations (you will need to resume direct examination timing for redirect questioning, and cross-examination time for recross questioning);
 - b. **DO NOT** reset stopwatch to zero at the end of the Prosecution's closing argument (you will need to resume the Prosecution's closing argument timing for the Prosecution's **rebuttal**).
 4. **START** timing only when each attorney starts to speak, (i.e. when the attorney actually speaks the first word of his or her opening, closing, or examination question – examples include but are not limited to, "May it please the court...", or, "Your Honor, Ladies and Gentlemen of the jury..." [for openings/closings] or, "Please state your name for the court..." [for examination question] – **NOT** when an attorney responds to a presiding judge's inquiry as to whether or not that side is ready to proceed, asks for permission to reserve time for a rebuttal, asks for permission to use/move a podium, or to swear a witness, etc.)
 5. **STOP** timing during objections, responses to objections, questioning by the judge, and when the attorney says his or her last word on completion of a given task.
 6. Remember: **DO NOT** count time:
 - a. From the time an objection is raised until after the ruling by the presiding judge and the examining attorney says the first word to continue the examination;
 - b. During the time a judge may raise questions to a team or the panel.
 7. Time **DOES NOT STOP** for the introduction of evidence.
 - D. Display time cards **simultaneously** throughout the round to **both teams** (attorneys and witnesses) and the presiding judge only at the intervals set out in the Time Card Use Table. Display the **STOP** card to both teams, the presiding, and the scoring judges.

- E. Timekeeping each trial is a function of both teams' timekeepers working together. Timekeepers *may not* display any increments of time (not outlined on the Time Card Use Table) to their own team independently of the opposing team's timekeeper at any time during the trial.

III. **DISCREPANCIES IN TIME BETWEEN TEAM TIMEKEEPERS DURING A TRIAL**

- A. If timing variations of **15 seconds or more** occur at the completion of any *task* (i.e. at the end of each opening, at the end of each witness examination, at the end of each cross-examination, and at the end of each closing argument) during the trial, the timekeepers are to notify the presiding judge that a time discrepancy has occurred. In this event, one timekeeper will politely address the presiding judge and say, "Your Honor, under Rule 4.6 there is a time discrepancy of more than 15 seconds."
- B. The presiding judge will ask the nature of the discrepancy and then rule on the discrepancy before the trial continues.
- C. Timekeepers will synchronize their stopwatches to match the ruling of the presiding judge (as an example, if Prosecution/Plaintiff's stopwatch indicates that the Prosecution/Plaintiff has 2 minutes left in the direct examination block of time and the Defense stopwatch indicates time has expired in the direct examination block for the Prosecution/Plaintiff team, the presiding judge *might* decide to split the difference in the timing variation and give the Plaintiff team 1 minute to conclude the direct examination. The Defense timekeeper would adjust timing to allow for the 1 minute timing decision.)
- D. Any discrepancies between timekeepers less than 15 seconds will not be considered a violation.
- E. No time disputes will be entertained after the trial concludes.
- F. The decisions of the presiding judge regarding the resolution of timing disputes are final.

IV. **AFTER THE TRIAL**

- A. The timekeeper is NOT required to turn in the timekeeping sheet at the end of the trial.

Kentucky High School Mock Trial Tournament Time Card Use Table

For Direct Examination

When your stopwatch says	Hold up the timecard that says
5:00	20:00
10:00	15:00
15:00	10:00
20:00	5:00
21:00	4:00
22:00	3:00
23:00	2:00
24:00	1:00
24:20	0:40
24:40	0:20
25:00	STOP

For Cross-examination

When your stopwatch says	Hold up the timecard that says
5:00	15:00
10:00	10:00
15:00	5:00
16:00	4:00
17:00	3:00
18:00	2:00
19:00	1:00
19:20	0:40
19:40	0:20
20:00	STOP

For Opening Statements & Closing Arguments

When your stopwatch says	Hold up the timecard that says
1:00	4:00
2:00	3:00
3:00	2:00
4:00	1:00
4:20	0:40
4:40	0:20
5:00	STOP

Kentucky High School Mock Trial Tournament
Timekeeping Sheet

Round Number: _____ Prosecution/Plaintiff Team Code: _____ Defense Team Code: _____

Opening Statements (5 minutes each)

Prosecution/Plaintiff _____
Defense _____

Direct/Redirect Examination of Three Prosecution/Plaintiff Witnesses (25 total minutes)

FIRST WITNESS (ending time) _____
SECOND WITNESS (cumulative ending time) _____
THIRD WITNESS (cumulative ending time: > 25 = time violation) _____

Cross/Recross-examination of Three Prosecution/Plaintiff Witnesses (20 total minutes)

FIRST WITNESS (ending time) _____
SECOND WITNESS (cumulative ending time) _____
THIRD WITNESS (cumulative ending time: > 20 = time violation) _____

Direct/Redirect Examination of Three Defense Witnesses (25 total minutes)

FIRST WITNESS (ending time) _____
SECOND WITNESS (cumulative ending time) _____
THIRD WITNESS (cumulative ending time: > 25 = time violation) _____

Cross/Recross-examination of Three Defense Witnesses (20 total minutes)

FIRST WITNESS (ending time) _____
SECOND WITNESS (cumulative ending time) _____
THIRD WITNESS (cumulative ending time: > 20 = time violation) _____

Closing Arguments (5 minutes each)

Prosecution/Plaintiff (and rebuttal, if any) _____
Defense _____

Remember: Clock Stops for Objections

Timekeeper's Signature: _____

Team Code: _____