

The CNMI Mock Trial Championship is governed by the Rules of the Championship, the Rules of Procedure and the Rules of Evidence (Mock Trial Version) herein. Any clarification of rules or case materials will be issued in writing to all registered teams as soon as practical prior to the scheduled Championship.

All teams are responsible for the conduct of persons associated with their teams throughout the mock trial event. Failure to observe appropriate conduct may subject the team to disqualification at the sole discretion of the coordinator. Inappropriate behavior may include, but may not be limited to the following: coaching (audible or visual) from the gallery, demonstrative reactions to rulings, disruptions from team supporters inside or outside the courtroom, etc.

The media may attend mock trial rounds to cover the event and take pictures, audio and/or videotape. Media representatives will be briefed to minimize disruptions to the trial round in process. Teams are encouraged to understand the value of media coverage and, to the extent practical, train to ignore their presence in order to maximize their trial round performance.

## **RULES OF THE CNMI MOCK TRIAL CHAMPIONSHIP**

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## I. RULES OF THE CHAMPIONSHIP

### A. THE PROBLEM

#### Rule 1. Rules

All trials will be governed by these Rules of the CNMI Mock Trial Championship and the Federal Rules of Evidence (Mock Trial Version).

Interpretations of these rules are within the discretion of the CNMI Bar Association Programs Committee, Mock Trial Subcommittee, or tournament coordinator/committee, whose decision is final.

#### Rule 2. The Problem

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

#### Rule 3. Witness Bound by

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. However, it shall not be considered unfair extrapolation if a witness testifies that s/he either agrees or disagrees with what other witness' statements claim the testifying witness may have said or done.

#### Rule 4. Unfair Extrapolation

Unfair extrapolations shall be attacked *only* through impeachment and closing arguments and are to be dealt with in the course of the trial. For example, the witness may be shown his/her witness statement and asked to admit that their specific testimony is not contained within the statement. A fair extrapolation is one that is neutral.

Attorneys shall not ask questions that call either for information outside the scope of the case materials or request 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. The attorney asking the question that requires an extrapolation is bound by the answer.

Judges may consider any unfair extrapolation and effective impeachment in their scoring.

The decision of the presiding judge is final.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings. The objection will be over-ruled if the extrapolation is fair. However, if the extrapolation is deemed unfair, the judge may sustain the objection, strike that portion of the testimony, direct the witness to answer the question, or make other ruling as he/she deems appropriate.

#### 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.

Care has been taken to present cases that are balanced and neutral in terms of gender and race. However, there may be times in which the specific gender or race of a witness is important. Teams are encouraged, staying within these rules of the Championship, to role-play and perform to the best of their abilities. Student bodies composed of students of one gender are allowed and encouraged to participate. Witness gender problems will be addressed on a case-by-case basis.

#### Rule 6. Voir Dire

Voir dire examination of a witness is not permitted.

### **B. THE TRIAL**

#### Rule 7. Team Composition

Teams consist of a **minimum of 6 to a maximum of 8 *participating* members** and a maximum of four alternates. Only six members may participate in any given round. Only eight members total may participate during all rounds of the Championship. At no time will a non-team member or more than 8 team members be allowed to participate. The teams should provide timekeepers (preferably adult). These persons may be considered "official timekeepers" in the tournament. The team roster will become official at the time of the event and shall remain fixed **throughout the Championship *and* national tournaments**, unless an exception is made by the coordinator. Alternates (beyond 12 members) are NOT allowed. Observers are allowed but are not members of the official team. Observers may not alternate with or replace members of the official team.

It is recommended that **all** team members be prepared to present either the prosecution/plaintiff or defense sides of the case.

Rule 7.1. Student Eligibility

Students must be currently enrolled as full-time students in order to participate as a team member.

Rule 8. Team Eligibility

Rule 8.1. Eligibility for Tournament

Teams must be properly registered with the Championship coordinator. Teams must be comprised of students from the sponsoring high school. Any exceptions must be approved in advance by the Championship coordinator.

Rule 8.2 Eligibility for the Championship Tournament

Teams must have been registered in order to compete in the Championship tournament.

Rule 8.3 Eligibility for the National High School Mock Trial Championship

The team competing in the National High School Mock Trial Championship shall be comprised only of participating members of the CNMI Championship team. The CNMI coordinator may designate an alternate team should the CNMI championship team be unable to participate, so long as all students on the team are from the same original team. **A MAXIMUM OF 8 STUDENTS SHALL COMPRISE THE CNMI ENTRY IN THE NATIONAL CHAMPIONSHIP.**

Rule 9. Team Presentation

Teams must be prepared to present both the Prosecution/Plaintiff and Defense 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. Only the six members presenting the case plus their timekeeper may sit in front of the bar. No other member of the team (attorney or teacher coach or non-participating team member) may sit in front of the bar. The **ONLY** exception to this rule is that a non-participating team member may act as the timekeeper. Violations of this rule will result in forfeiture of the trial round.

Rule 9.1 Team Roster

Prior to each trial round of competition each team shall complete a team roster and present the roster to the presiding judge, scoring panelists, and the opposing team. A sample roster follows.

**CNMI MOCK TRIAL CHAMPIONSHIP**

**TRIAL ROSTER**

This sheet is to be completed by each team prior to EACH round and copies presented to the coordinator, the presiding judge, opposing counsel and the panel of scoring judges.

**TEAM IDENTIFICATION**

Circle one:      Round    I                    II                    III                    Championship

In this round, students listed on this roster will represent (Circle one):

**Prosecution**  
**Name of Student Portraying Attorney:** \_\_\_\_\_ **Tasks:**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

**Name of Student Portraying Witness** \_\_\_\_\_ **Role Po**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

Defense  
**Name of Student Portraying Attorney:** \_\_\_\_\_ **Tasks:**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

4. (m/f)

Defense Witne

5. (m/f)

Defense Witne

6. (m/f)

Defense Witne:

### Rule 9.2 Emergencies

In the event of an emergency that would necessitate a team to consider participating with less than six members, the team must notify the tournament coordinator/committee as soon as is reasonably practical. If the tournament coordinator/committee in its sole discretion agrees that an emergency exists, the tournament coordinator/committee shall declare an emergency and the team may continue in any trial round with less than six members. If the tournament coordinator/committee does not concur that an emergency exists, the team will forfeit the round.

If a trial cannot proceed, the forfeiting team will receive a loss, and the ballots and points equal to the lowest score in that round. The non-forfeiting team will receive the round win, all 3 ballots and the average number of points received by winning teams in that round.

Final determination of emergency will be made by the tournament coordinator/committee.

### Rule 9.3 Participating Member Designation

Each team shall submit a list of the six to eight members of the team that will participate in the Championship (the Participating Member Designation). No other team members will be allowed to participate unless the Participating Member Designation is amended. Amendment must be approved by the Championship coordinator and shall not result in more than eight team members participating in the Championship.

### Rule 10. Team Duties

Team members are to evenly divide their duties. Each of the three attorneys shall conduct one direct and one cross; in addition, one shall present the opening statement and a different attorney shall present closing argument.

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

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.

The attorney who presents closing arguments is the only person who may offer rebuttal.

Each team must call three witnesses. Witnesses must be called only by their own team and examined by both sides. Witnesses may not be recalled by either side.

### Rule 11. Swearing of Witnesses

The following oath shall 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 Championship?"*

Either the presiding judge, or designated clerk or bailiff, will administer the oath to all witnesses at the start of testimony or will administer the oath to each individual witness when called. Witnesses must stand during the oath **UNLESS PHYSICALLY IMPAIRED**.

#### Rule 12. Trial Sequence, Segments and Time Limits

The trial sequence, segments and time limits are as follows:

1. Opening Statement (5 minutes per side)
2. Direct and Redirect (optional) Examination. (25 minutes per side)
3. Cross and Recross (optional) Examination. (20 minutes per side)
4. Closing Argument (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. Reservation of time must be noted to the judge. The Prosecution/Plaintiff's rebuttal is limited to the scope of the Defense's closing argument. **TIME NOT RESERVED IS LOST.**

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

#### Rule 13. Timekeeping

Time limits are mandatory and will be enforced. Each team shall have its own timekeeper and timekeeping aids. Timekeeping aids are limited to no larger than 8 1/2 X 11" signs (templates have been provided in Attachment 1) showing time remaining and a stopwatch or similar timing device. However, an official timekeeper may be assigned to each trial (dependent upon the number of volunteers available).

In displaying time remaining, the timekeeper must **prominently** show the time remaining to both the performer and the presiding judge. **When time runs out the timekeeper shall STAND, and say, "STOP" in a voice loud enough to be heard by the presiding judge, scoring panel and the performing student.**

The time for making and arguing objections is to be counted as part of the time of the side examining the witness. If a team is deliberately using the other team's time with objections, the presiding judge may extend the time. 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.

Coaches (attorneys or teachers) are expressly forbidden to time during Championship. Attempting to do so shall result in forfeiture of the round.

#### 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, performance points will be affected. If a student chooses to continue after the stop signal, the opposing team should make an objection (see also Rules 30 and 45) to be ruled on by the presiding judge. Performance scores may be affected. If the opposing team does not object, there will be no penalty nor will a dispute be allowed nor considered after conclusion of the trial round.

#### Rule 15 Prohibited Motions

No motions may be made except as outlined below. A motion for directed verdict, acquittal or dismissal of the case at the end of the Prosecution's case may not be used.

A motion for a recess may be used only in the event of a 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, teacher sponsors, or coaches 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 the counsel table in the educational interest of handling all matters in open court.

#### Rule 18. Supplemental Material/Illustrative Aids (PROPS AND/OR 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, modifications or laminations of the case materials will be permitted. Nor may exhibits be placed in slip covers or in trial books. Exhibit stickers may be used. **ABSOLUTELY NO PROPS OR COSTUMES ARE PERMITTED** unless authorized specifically in the case materials.

In the event a team member appears at trial in costume, at the judge's discretion, the team may be disqualified or the trial may be postponed for a change of clothing. In the event changing clothes is not an option, the presiding judge may allow the trial to proceed. The presiding judge will meet in sidebar with his/her fellow panelists with the intent to consider the penalty of the witness. The penalty for use of costumes or props is **TWO BALLOT POINTS**.

Rule 19. Trial Communication

Teachers, attorney coaches, non-performing team members and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any recess time that may occur. Team members may, among themselves, communicate during the trial; however, no disruptive communication is allowed. Signaling of time by official timekeepers shall not be considered a violation of this rule. **IF TIMEKEEPING IS PROVIDED BY THE TOURNAMENT COORDINATOR, THE TEAM TIMEKEEPER SHALL NOT BE SEATED INSIDE THE BAR NOR SHALL THEY PROVIDE ANY SIGNALS TO THEIR TEAM.**

Non-team members, alternate team members, teachers, and coaches must remain behind the bar in the gallery section of the courtroom. Only team members participating in this round may sit inside the bar. In the event the jury box is opened by the presiding judge for seating, no teacher, coach or alternate team member shall sit in the jury box.

Rule 20. Viewing a Trial

Team members, alternates, attorney coaches, teacher sponsors, parents, siblings or any other persons directly associated with a mock trial team **are not allowed to view other teams** in the tournament with the exception of viewing the Championship round.

Rule 21. Videotaping/Photography

Any team has the option to refuse participation in videotaping by the opposing team or opposing team school media. However, videotaping, tape recording, or still photography, by the media will be allowed.

Commercial media coverage (TV, radio and/or newspaper) will be allowed.

**C. JUDGING AND SCORING**

Rule 22. Decisions

All decisions of the presiding judge are FINAL.

Rule 23. Composition of Panel

The scoring panel will consist of a minimum of three individuals, which may or may not include the presiding judge. The composition of the scoring panel and the role of the presiding judge will be at the discretion of the tournament coordinator/committee.

The championship round may have a larger scoring panel.

#### Rule 24. Score Sheets/Ballots

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 scorers. Scoring panelists are not bound by the rulings of the presiding judge. The team that earns the highest points on an individual scorer's score sheet is the winner of that ballot (or the round win) on that score sheet. The team that receives the majority of the ballots wins the round. Ballots determine the win/loss record of the team, and along with the performance points earned in each round, are used for power-matching, tie breaking, and ranking purposes. The scoring panel should not deliberate on individual attorney or witness scores, nor should they deliberate on the award of ballots.

#### Rule 25. Completion of Score Sheets

Score sheets are to be completed in four steps:

1. Individual Points - Record a number of speaker points (1-10) for each segment of the trial.
2. Sub-Total - Total the sum of each team's individual (segment) points and place this sum in the Sub-Total box.
3. Final Point Total - Add the attorney and witness sub-total boxes to achieve a final point total for each team. **NO TIE IS ALLOWED IN THE FINAL POINT TOTAL BOX.**
4. BALLOT - Based on the team with the highest number of points in the Final Point Total, circle Plaintiff/Prosecution or Defense. In the event of a mathematical error this selection will also be used as a **tiebreaker**, i.e., a mathematical error which, when corrected, results in a tie, this selection will establish the winning team.

#### Rule 26. Team Advancement

A random draw will determine opponents in the first round of the tournament. A power-match system will determine opponents for all subsequent rounds. The two schools emerging with the strongest record from the preliminary rounds will advance to the final Championship round. The CNMI champion shall be determined by ballots from the championship round only.

#### Rule 27. Power Matching

Power matching will provide for:

1. Random pairing in the first round;
2. All teams will be guaranteed to present each side of the case at least once;

3. Brackets will be determined by win/loss record. Sorting within the brackets may be determined using the following:
  - a. Win/Loss Record - equals the number of rounds won or lost by a team;
  - b. Total Number of Ballots - equals the number of win ballots a team earned in preceding rounds;
  - c. Total Number of Points Accumulated in Each Round;
  - d. 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 su

#### Rule 28. Merit Decisions & Score Sheet Release

Judges should not make a ruling on the legal merits of the trial. **Judges and panelists shall NOT inform the students of score sheet results.** Score sheets, however, will be released, on request within a week after the conclusion of the Championship.

#### Rule 29. 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 tournament coordinator/committee 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.

The tournament coordinator/committee has the discretion on how to handle a bye in all rounds of the tournament

### **D. DISPUTE SETTLEMENT**

#### Rule 30. Reporting a Rules Violation/Inside the Bar

Disputes which (a) involve students competing in a Championship round and (b) occur within the bar, must be filed immediately following the conclusion of that trial round. Disputes must be brought to the immediate attention of the presiding judge at the conclusion of the trial.

If any team believes that a rules violation has occurred, one of its student attorneys must indicate to the presiding judge that the team intends to file a dispute. The scoring panel will be excused from the courtroom, and the presiding judge will provide the student attorney with a dispute form, on which the student will record in writing the nature of the dispute. The student may communicate with teammates inside the bar before lodging the notice of dispute or in preparing the form.

At no time in this process may the student attorneys communicate or consult with teammates, team sponsors or coaches outside the bar. Only student attorneys may invoke

this (inside the bar) dispute procedure. **Teachers or attorney coaches are barred from reporting inside the bar violations.**

Rule 31. Dispute Resolution Procedure

The presiding judge will review the written dispute and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record the reasons for this, announce her/his decision to the Court, complete his/her score sheet (if applicable), and turn the dispute form in with the score sheets. If the judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a spokesperson. After the spokespersons have had time (not to exceed three minutes) to prepare their arguments, the judge will conduct a hearing on the dispute, providing each team's spokesperson three minutes for a presentation. The judge may question the spokespersons. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider her/his ruling on the dispute. The judge may consult with the tournament coordinator/committee regarding rules interpretation. The judge's decision will be recorded in writing on the dispute form, *with no further announcement.*

Rule 32. Effect of Violation on Score

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

Rule 33. Reporting of Rules Violation/Outside the Bar

Disputes which (a) involve people other than student team members and/or (b) involve non-participating student team members and (b) occur outside the bar *during a trial round*, may be brought by teacher sponsors or attorney-coaches exclusively. Such disputes must be made promptly (within 10 minutes of the conclusion of the match) to the tournament coordinator/committee, who will ask the complaining party to complete a dispute form. The form shall be taken to the tournament's communication's center, whereupon a dispute resolution panel will (a) notify all pertinent parties; (b) allow time for a response, if appropriate; (c) conduct a hearing; and (d) rule on the charge. The dispute resolution panel may notify the scoring panel of the affected courtroom of the ruling on the charge.

The dispute resolution panel will be composed of the tournament coordinator and/or committee members.

## **II. RULES OF PROCEDURE**

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

#### Rule 34. Team Roster

Copies of the Team Roster Form must be completed and duplicated by each team prior to the competition. Teams must be identified by the code assigned by the tournament coordinator. No information identifying team origin should appear on the form. 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 tournament coordinator, scoring 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 the stipulations into evidence.

#### Rule 36. The Record

Neither stipulations, nor the information, nor the Charge to the Jury will be read into the record. In cases where more than 3 witnesses are provided, statements of unused witnesses will not be read into the record.

### **B. Beginning the Trial**

#### Rule 37. Jury Trial

The case will be tried to the scoring panel; arguments are to be made to the scoring panel. Teams may address the scoring panel 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. ATTORNEYS SHOULD RECEIVE PERMISSION FROM THE PRESIDING JUDGE PRIOR TO APPROACHING THE WITNESS, THE JURY OR MOVING FROM THE LECTERN OR COUNSELS' TABLE INTO THE WELL AREA OF THE COURTROOM.

#### Rule 39. Objection During Opening Statement

No objections may be raised during opening statements or during closing arguments. **See Rule 45 herein.**

### **C. Presenting Evidence**

#### Rule 40. 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 41. 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 42. 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 be 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 43. 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 44. Redirect/Recross

Because each party can only call three witnesses and no witnesses can be recalled, cross examination is not limited to the scope of direct examination. However redirect examination , if any, is limited to the scope of cross examination and re-cross examination, if any, is limited to the scope of redirect examination.

## **D. Closing Arguments**

### Rule 45. Scope of Closing Arguments

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

If a team objects to information presented during the opposing team's closing, a student may, following the closing argument, rise to be recognized by the judge and 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 the opposing team will be heard.

If a team objects to the opposing team taking more time than allowed, a student may, following the closing argument, rise to be recognized by the judge and say, "If I had been permitted to object during closing arguments, I would have objected to the opposing team taking more time than allowed." Additional time shall not be requested although the presiding judge may allow it. The presiding judge will not rule on this objection. Presiding and scoring judges will weigh the objection individually and have the option of reducing the performance score of the student performing the closing argument. No rebuttal by the opposing team will be heard.

## **E. Critique**

### Rule 46. The Critique

The scoring panel is allowed 15 minutes for debriefing. The courtroom monitor provided by the tournament committee will monitor the critique following the trial. Presiding judges are to limit critique sessions to the 15 minutes total time allotted.

### **III. 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 Championship, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence, and its numbering system. Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure. Text in italics or underlined represent simplified or modified language.

Not all judges will interpret the Rules of Evidence (or procedure) the same way, and mock trial attorneys should be prepared to point out specific rules (quoting, if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate.

The Mock Trial Rules of Championship and these Federal Rules of Evidence (Mock Trial Version) govern the Championship.

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

Rule 101. Scope - These Federal Rules of Evidence (Mock Trial Version) govern the trial proceedings of Championshipal and CNMI tournaments in CNMI.

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 facts of the case 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 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, or 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 of evidence effective for ascertaining the truth,
- (2) to avoid needless waste 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.

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. 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 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 therefore 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 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, 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, 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 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 refl

- (6) Business Records - Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, 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 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 the 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.
- (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 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.