

Trial Day Procedures: High School Mock Trials



Courtroom Protocol

Our ability to hold trials in actual courtrooms is one of the distinguishing features of the Mock Trial Program. As the program has grown over the years, so too has the number of complaints from judges and court administrators about the use/condition of their courtrooms and other areas of the courthouse during and after the trials. In an effort to maintain cordial relations with these key people, please abide by the following guidelines:

1. Private chambers are not available for use by mock trial judges. Please do not wander in these restricted areas seeking a place to confer with your co-judge.
2. No food or drink is allowed in the courtrooms, except that student attorneys may have a cup of water at their counsel table. (We do not provide cups.)
3. Please remove all of your papers, casebooks, exhibits, etc. from the bench area before you leave. Please remind the teams to return each courtroom to its original configuration of tables, chairs, podium, etc. and to remove all objects/trash from the courtroom. (*Keep in mind that the losing team often exits rather quickly and, in their disappointment, may neglect to follow through on this responsibility, while the winning team may linger to celebrate and leave exuberantly, also neglecting to follow through.*)
4. Please remind everyone that the courtrooms usually have an emergency call button (located by the witness box, the judge's bench or elsewhere). The button should not be touched except in an emergency, since court personnel respond to these silent call buttons and are displeased by a false alarm.

Case Clarifications

Clarifications to the original case materials are available online at the mock trial website at www2.mnbar.org/mocktrial/clarifications.htm. Judges will receive a copy of all clarifications made prior to the distribution of the case materials; if you want to check whether further clarifications are made, you can access them on the website. It is also reasonable to expect teams to be familiar with them and to bring them to your attention.

Summary & Clarification of Some Key Mock Trial Rules

1. The trial proceedings are governed by the Mock Trial Rules of the Competition and the Simplified Rules of Evidence included in the case materials. **These are the only evidentiary rules in effect during mock trials.** Other more complex rules may not be raised; if they are, use your score(s) to reflect the fact that the rules of the competition were not observed at all times.
2. Please allow only those objections which are in the mock trial rules. Keep in mind that the **only** allowable hearsay exceptions are in Rule 804 of our Simplified Rules of Evidence, so please, please, please **overrule any other hearsay exception** a team raises. (While judges have quite a bit of discretion in the "real world," we try to remove some of this discretion in mock trials in order to keep things fair to the greatest extent possible. We want to reward, not penalize, students who conduct their case within the confines of the Mock Trial Program rules.)
3. Please pay particular attention to Rule 2.3 of the Mock Trial Rules re: Unfair Extrapolation. This rule is often a tricky one, since the definition of "unfair extrapolation" is a bit like the issue of pornography ("hard to define, but we know it when we see it").

Basically, Rule 2.3 provides that trial participants are bound by the information provided in the mock trial case materials. The purpose of the rule is to set some boundaries on the case materials; since it is a fictitious scenario we can't cover all possible relevant information, but we don't want teams to be able to "invent" things that favor their

side and/or disfavor the other side, just because something isn't addressed in the case materials. If an attorney asks a witness to provide information that is outside of the scope of these materials, *and the answer would materially affect the case*, then the answer should be considered unfair extrapolation.

The opposing team can deal with unfair extrapolation in one of 3 ways, by:

- a. Making an objection in open court (if the extrapolation *is* unfair, please sustain the objection);
- b. Impeaching the witness; or
- c. Referencing the extrapolation in closing arguments.

4. Time limits on each portion of the trial are extremely important, so please strictly enforce them. (Remember that the clock stops during objections.)

Equally important is your adherence to the time limit on judges' comments at the end of the trial. **Please limit the total time for comments by all judges to a maximum of 10-15 minutes.** Lengthy comments may interfere with the students' other commitments and/or transportation arrangements, or the start of the next trial.

Please do not teach during the trial itself. Use the brief comment time afterwards to offer some feedback, but offer suggestions rather than directives. Remember that every team is working with one or more lawyer/judge coaches, so they've had lots of "legal advice." And please, **keep the comments constructive** – we want to offer a positive learning experience, regardless of the outcome of the trial.

5. All objections, including those concerning possible rules violations, must be made and dealt with in open court.

6. **No recesses** are allowed during the course of the trial, except in case of emergency.

7. Please ask observers (e.g., parents) to sit in the regular seating area. If that area fills up, only then should observers be allowed to sit in the jury box.

Completing Your Scoresheet

In general, **please remember that these are high school students you are scoring** and adjust your expectations accordingly. After all, mock trials are designed to be a positive learning experience. Be fair, but be reasonable.

1. Please use the mock trial performance rating standards as guidelines when judging your trial(s). What we hope to achieve in the judging process is a balancing (which lawyers are so good at) of style and substance. This means that the primary emphasis should be on determining which team accomplishes the following:

- Constructs a better theory of the case;
- Shows a better understanding of the legal and public policy issues involved; and
- Demonstrates a better ability to think on their feet and to use the rules of evidence and procedure to present their case.

Keep outstanding *theatrical* performances in perspective since the Mock Trial Program is **not a drama tournament** (although we as lawyers know that presentation style plays an important role in the trial process).

2. Please be sure to mark a score in every box on the rating sheet; co-judges should exchange scoresheets to ensure that this is done. Fractions are not allowed and will not be counted.

3. Please mark your rating sheet independently of your co-judge, and then confer to determine the winner of the trial (by adding together the scores from each judge for each team). **Please re-check your addition to ensure accuracy in the calculations;** errors are not uncommon.

4. Rule 5.1: Finality of Decisions (p. 69)

This rule used to refer to all decisions of the judges as final. Due to a math error on a scoresheet in a past year, we have added an exception to the notion of "finality." If we find a math error that changes the totals on the scoresheets, with the result that the team that was announced as the performance winner actually has fewer points than their opponent, the results of the trial will be officially changed. The region rankings thus will be based on the correct numerical totals rather than what may have been announced to the teams.

5. Please put the date and your name in the spaces provided on the rating sheet. Give the colored copies to the respective teams and mail the white copies to the MSBA if there is no Mock Trial Program representative present to collect them after the trial (MSBA, 600 Nicollet Mall, Suite 380, Minneapolis, MN 55402).