

MINNESOTA HIGH SCHOOL MOCK TRIAL COMPETITION RULES

Any clarification of rules or case materials will be issued in writing to all participating teams no less than two weeks prior to the tournament.

Each team is responsible for the conduct of persons associated with the team throughout the mock trial event.

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Team Roster Sample Form

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I. RULES OF THE COMPETITION

A. ADMINISTRATION

Rule 1.1. Rules

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

Questions or interpretations of these rules are within the discretion of the Minnesota State Bar Association (MSBA), 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 MSBA possesses discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violations or 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 (NHSMTC)

B. THE PROBLEM

Rule 2.1. The Problem

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

The problem shall consist of three 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. Witnesses 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."

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 (i.e., would not be considered "unfair extrapolation" under Rule 2.3).

A witness is not bound by facts contained in other witness statements. Witnesses must be prepared to deal with any inconsistencies between their own statement and the case materials. Witness statements are subject to all of the human inaccuracies that people make in similar situations. These include distortion and even dishonesty.

Rule 2.3. Unfair Extrapolation

Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. A fair extrapolation is one that is neutral.

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

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

Attorneys for the opposing team may refer to Rule 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. An unfair extrapolation has occurred;
- c. The extrapolation was fair; or
- d. Ruling is taken under advisement.

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

The decision of the presiding judge regarding extrapolations or evidentiary matters is final. Judges should use their scores to reflect whether they believe that unfair extrapolation has occurred, but scoring judges may not do so if the presiding judge has ruled in open court that no such extrapolation has occurred.

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.

C. TEAMS

Rule 3.1. School and Student Eligibility

The competition is open to students currently enrolled in grades nine through twelve in all Minnesota schools. Program information and registration forms are mailed to principals and social studies department chairs at the beginning of the school year.

To participate in the competition schools must return a completed entry form and registration fee for each team entered. Registration forms received after November 1 will not be guaranteed trials in the competition.

Schools may enter one or two teams in the competition. Schools with an enrollment of at least 1,500 students in their particular school may enter up to three teams in the competition if they had two teams competing the previous year.

For schools with a large number of students interested in participating in the mock trial program, there are several options:

Hold tryouts for the mock trial team(s) and have the teacher coach (the attorney coach may also want to participate) select team members.

Hold intraschool rounds to determine which students will represent the school in regional and state competition.

Schools must follow the MSBA procedures for confirming their trial schedules or be disqualified from entering the competition the following year.

Rule 3.2. Team Composition

Each team must consist of at least **eight** primary members: three attorneys, three witnesses, a timekeeper and one alternate. In addition to these eight, each team is also encouraged to have at least one other alternate so that the team can proceed with the trial in the event of a team member's illness at the time of the scheduled trial. Roles for the alternates might include bailiff or the alternates may be used in any manner the coaches choose. However, in the best interest of the alternates, it is highly recommended that each alternate be allowed to participate in at least one trial.

Students may switch roles for different rounds of trials (i.e., a student may be an attorney for the prosecution but a witness for the defense).

Students may participate on only one team. Once a student has played the role of an attorney or witness in a trial during the competition, s/he is considered a member of that team. Thus, an alternate for Team A who was a *bailiff* during Round 1 could become a witness for Team B during Round 2. This alternate would then be considered a member of Team B and would not be able to attend Team A's trial during Round 2 or thereafter. But, if the Team A alternate had been called on to be a *witness* in Round 1, s/he would then not be eligible to play *any* role for Team B in *any* round.

A team can also select an entirely new member after the first round of trials, even if this person was not officially listed as an alternate on the team roster. This person could serve in *any* capacity during Round 2 or thereafter.

*****IMPORTANT NOTE:** Up to 4 attorney and/or witness roles may be substituted for during any round of trials. ***This means that at least 2 students must perform in both Round 1 and Round 2 in the role of attorney and/or witness.*** An official mock trial team can thus have as many as 14 members.

Every team must be fully prepared to argue both sides of the case. Schools cannot have a separate "prosecution team" and "defense team." Only one team from each school will compete at the state tournament.

Students who have participated in previous mock trials may participate again. However, teacher coaches are encouraged to recruit new team members so additional students will have a chance to get a better understanding of the judicial process through this law-related education project.

Refer to Section D. The Trial for more details on the student attorney roles.

Refer to Mock Trial Time Sequence (Rule 4.5) for more details on the timekeeper's role.

Rule 3.3 Team Presentation (NHSMTC)

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 and rebuttal. [See Rule 4.5]

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 is the only one permitted to make objections during the direct examination of that witness.

Each team must call three 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

Copies of a Team Roster must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams must be identified *only* by the side they are arguing (e.g. prosecution or defense). No information identifying team origin (name, location, etc.) should appear on the roster. Before beginning a trial, the teams must exchange copies of their Team Roster. The roster 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 also should be given to the judging panel and presiding judge before each round. A sample roster format is included at the end of the case packet.

D. THE TRIAL

All trials will be governed by the "Simplified Rules of Evidence" contained in these materials. Other more complex rules may not be raised in the trial.

Rule 4.1 Courtroom Setting (2-5, Minnesota only)

1. The Plaintiff/Prosecution team shall be seated closest to the jury box. If a team wants to rearrange the courtroom, the teacher coach must ensure that the courtroom is returned to its original arrangement before the team leaves the courtroom at the end of the trial.

2. Coaches must sit so they are behind the student attorneys (i.e., coaches should not be visible to the attorneys during their presentations).

3. All participants are expected to display proper courtroom behavior. The following rules should be observed in the courtroom at all times:

A. Students should dress appropriately for a courtroom setting. (Suits are not required.) A student playing the part of a witness may wear clothing consistent with that witness' character, but may not wear a costume. [Refer to Rule 4.11 for rule about costumes.]

B. Be courteous and respectful to witnesses, other attorneys, and the judge.

- C. Ask permission of the judge to approach the witness.
 - D. If you receive a ruling against your side on a point or on the case, accept the decision gracefully.
4. All participants are expected to display proper behavior in the courthouse. The following rules should be observed in the courthouse at all times. Any violation of these rules (e.g., going into other parts of the courthouse) will be grounds for requesting that school to leave the courthouse.
- A. Each team must have an adult chaperone assigned to it while at the courthouse. The chaperone must remain with the team at all times, while the team is waiting for a trial to begin, competing in the courtroom, waiting for another team to finish competing, etc.
 - B. All students must stay in the area of the courthouse where the competition is being held. Students will be allowed to use the restrooms which are nearest to the courtroom being used for competition.
 - C. Students may not have in their possession any food, beverage or gum while in the courthouse.
 - D. Following completion of the competition, the coaches will inspect the area used for the competition, including the restrooms, to ensure that everything is left in the same condition in which it was found.
 - E. If requested to do so by the Court Administrator, the coaches will notify the administrator's office when their team arrives and when it leaves. The latter will provide an opportunity for the Court Administrator to arrange for an inspection of the area.
5. In order to avoid the appearance of impropriety or bias, coaches should not interact with the judges until after the trial except as provided in rule I.2.

Rule 4.1(A) Pretrial Matters (Minnesota only)

1. Teams are expected to be present in the courtroom fifteen minutes before the starting time of the trial. To assist in enforcing these rules, presiding judges, upon taking the bench before the start of the trial, will handle the following pre-trial matters:
- A. Ask each side if it is ready for trial. Ask each side to provide the judges with copies of its team roster (a sample roster is provided in the back of these rules). Ask each member of a team to rise and identify himself/herself by name and role.
 - B. If video recorders are present, the judge will remind the teams that the tape cannot be shared with any other team. (See Rule 4.14 for more on videotaping.)
 - C. The judge will remind all present in the courtroom of the rule prohibiting verbal or written communication between the team members and the coaches, spectators or anyone else throughout the trial round, including any recesses. (This is to be especially stressed in crowded court settings where there is close proximity between audience and teams.) Communication is allowed once the trial is complete and the judges have begun their deliberation.

2. The judge will remind all present that the courtroom should be put back in order, all trash removed, and that no food or drink is allowed anywhere, at any time, by anyone.
3. Team members will meet the judges for introductions and to assure that the rules of evidence and procedure are uniformly interpreted. Each team should submit to the judges a roster of the students' names and the roles they will play. The Mock Trial Program will receive team rosters from all judges. The parties should also ask the judges when the exhibits (if any) should be marked for identification.
4. The starting time of any trial will not be delayed for longer than ten minutes, except with the agreement of the teacher coaches for both teams and the presiding judge. Incomplete teams may proceed with the trial by having one or more members play up to two roles. However, incomplete teams will be assigned a two (2) point deduction by each judge for each missing attorney, witness or timekeeper.
5. Once a trial has been scheduled, the trial will not be rescheduled due to the absence of a team member or illness, unless approved by the mock trial manager. Teams should include alternates to replace absent members. Trials may be rescheduled due to inclement weather conditions at the discretion of the Mock Trial Manager.
6. All team members must remain in the courtroom during the entire trial. During a formal recess called by the judge, team members may leave the courtroom but should not communicate with anyone other than their student team members.

Rule 4.2 Stipulations

Stipulations shall 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?"

Rule 4.5 Trial Sequence and Time Limits

The trial sequence 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 Re-cross (optional) Examination (20 minutes per side)
4. Closing Argument and Rebuttal (5 minutes per side).
The prosecution/plaintiff attorney may reserve up to 3 minutes of his/her time for rebuttal. The attorney must advise the court at the beginning of his/her argument what portion (if any) of the allotted 3 minutes s/he wishes to set aside for rebuttal.
5. Team Conference (2 minutes)

The Prosecution/Plaintiff gives the opening statement and the closing argument first.

The Plaintiff's Opening Statement must be given at the beginning of the trial. The Defense may choose to postpone its Opening Statement until after the conclusion of the Plaintiff's case-in-chief.

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

Time limits are mandatory and will be enforced. Each team is required to have its own timekeeper and timekeeping aids. (See sample timekeeping aids in the back of case materials and rules.)

Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements.

Time does not stop for introduction of exhibits.

Every effort should be made to respect the time limits. Judges will be asked to use their scores to reflect a team's ability to adhere to the time guidelines. Perceived time violations are an issue which generates much controversy every year during the Mock Trial Competition. Due to the nature of the event and in the interest of keeping the competition good-spirited, teams are urged to adhere to the time limits indicated and to give their opponents the benefit of the doubt if minor infractions occur.

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 shall determine individually whether or not to discount points in a category because of over-runs in time.

Rule 4.8 Motions Prohibited

Motions which defeat the purpose of the trials (such as those to dismiss or to sequester or motions in limine) will not be allowed.

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/Costuming/Exhibits

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 makeup which are case specific.

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

In order to allow teams to use Exhibit 1 during the trial, teams may laminate and enlarge this exhibit to a maximum size of 24 by 36 inches. There can be no other enhancement of the exhibits (e.g., color, additional words), but they can be mounted on poster board or foam core in order to allow them to be handled more easily.

No other chalkboards, posters or other visual aids are permitted during the trial, except that during closing arguments a flip chart or other paper (e.g. newsprint) with hand lettering or hand drawing may be used.

Rule 4.12 Trial Communication

Instructors, alternates and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any emergency recess which may occur. Signaling of time by the teams' timekeepers shall not be considered a violation of this rule.

Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar and communicate with each other; however no disruptive communication is allowed.

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 MSBA, are not allowed to view other teams' performances, so long as their team remains in the competition.

Everyone attending a trial should be reminded that appropriate courtroom decorum and behavior must be observed and that absolutely no food or drink is permitted in the courtroom.

Rule 4.14 Videotaping/Photography

Videotaping can be an effective teaching tool and is permitted in each round of competition provided that:*

1. A team only tapes a trial in which it is competing.
2. The taping must not disrupt the trial. Photographers should position themselves carefully to avoid distracting the participants during the course of the trial.
3. The tape will be used only by the competing team and will not be shared with any other team (even from the same school) or used for the purposes of "scouting."

*Note: There are some courthouses that do not allow videotape equipment in the courtroom. Please be aware that mock trial participants will be required to adhere to this policy.

Rule 4.15 Jury Trial (NHSMTC only)

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 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 and use their scores to reflect whether they believe a rules violation has occurred. No rebuttal by opposing team will be heard.

Rule 4.18 Objections

The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge will ask the reason for it. Then the judge will turn to the attorney who asked the question, and that attorney usually will have a chance to explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether a rule of evidence has been violated ("objection sustained"), or whether to allow the question or answer to remain on the trial record ("objection overruled").

1. Argumentative Question: An attorney shall not ask argumentative questions, i.e. one that asks the witness to agree to a conclusion drawn by the questioner without eliciting testimony as to new facts. The court, however, in its discretion, may allow limited use of argumentative questions on cross-exam.

2. 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").

3. Badgering the Witness: An attorney may not harass or continue to annoy/aggravate a witness.

4. Beyond the Scope: Refer to Rule 611(b); applies only to redirect & re-cross.

5. Character Evidence: Refer to Rule 608.

6. Hearsay: Refer to Mock Trial Rules of Evidence, Article VIII for an explanation of hearsay and the exceptions allowed for purposes of mock trial competition.

7. Irrelevant: Refer to Article IV.

8. Lack of Personal Knowledge: A witness may not testify on any matter of which the witness has no personal knowledge. (See Rule 602, Article VI)

9. Lack of Proper Predicate/Foundation: Attorneys shall lay a proper foundation prior to moving the admission of evidence. The basic idea is that before a witness can testify to anything important, it must be shown that the testimony rests on adequate foundation. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.

10. Lack of Qualification of the Witness as an Expert: See Rule 702.

11. Leading Question: Refer to Rule 611(c).

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

13. Opinion on Ultimate Issue: Refer to Rule 704.

14. Question 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.")

15. 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.

16. Speculation: A witness' testimony should be based on the facts and issues of the case being argued. An attorney shall not ask a question which allows the witness to make suppositions based on hypothetical situations.

17. Unfair Extrapolation: Refer to explanation in Rule 2.3.

Note: Teams are not precluded from raising additional objections which may be available under the Minnesota Mock Trial Competition Rules of Evidence.

Rule 4.19 **Reserved.**

Rule 4.20 **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."

Note: A witness may be asked questions about his/her statement without its introduction into evidence; but to read from it or submit it to the judge, it must first be admitted into evidence.

Rule 4.21 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 4.22 Redirect/Re-cross

Redirect and re-cross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Minnesota High School Mock Trial Rules of Evidence.

Rule 4.23 Scope of Closing Arguments

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

Rule 4.231 Team Conference (Minnesota Only)

The following rule is designed to deal with the extraordinary circumstance where a team believes that a significant rules violation occurred during the trial which the judges may not have observed. This rule is not designed to increase the contentiousness of the trial process or to encourage teams to try to find rules violations. At the conclusion of final arguments, the presiding judge will allow two minutes for the three student attorneys, three witnesses bailiff and timekeeper to confer. The purpose of this team conference is to give these team members a chance to discuss among themselves whether they believe any significant rules violations occurred during the trial of which the judges could not be aware or have observed themselves.

After the allotted two minutes, the presiding judge will ask if either team wishes to report any significant rules violations. If a team feels point deductions should be assessed against the opposing team, one attorney from the team will have two minutes to explain why point deductions should be assessed. Following this explanation, one attorney from the opposing team will have two minutes to explain why point deductions should not be assessed. Further discussion will be limited to five minutes total, at which time the judges will decide individually about making any point deductions on their scoresheets. The amount of such point deductions, if any, is at the discretion of each individual judge. **These decisions (about point deductions) are final!**

Of course the judges may, at their discretion, award point deductions for a rules violation regardless of whether the opposing team brings a rules violation to the attention of the judges.

If the presiding judge fails to ask the teams if they wish to ask for point deductions, and one or both teams wish to do so, it must be brought to the attention of the judge at this time.

Rule 4.24 The Critique

The judging panel is allowed 15 minutes for debriefing. The timekeeper will monitor the critique following the trial. Presiding judges are to limit critique sessions to a combined total of fifteen minutes.

The presiding judge will render two decisions at the end of the trial:

1. The merits of the legal case and the applicable law (i.e., a decision about guilt or innocence in a criminal trial, or in favor of the plaintiff or respondent in a civil trial). **This decision is not used to determine the team's win/loss record or standing in the competition** (i.e. you can win the case on the merits but still lose the trial for mock trial purposes, or you can lose on the merits and still be the trial winner for mock trial purposes).

2. The quality of the teams' performances, i.e., the nature/success of the team's strategy, the students' level of preparedness, the individual student performances, etc.. The total points awarded to each team by each judge will be added together; the team with the higher point total will be considered the winning team. **The team that wins on its performance is considered the winner of the trial for mock trial purposes.**

Rule 4.25 Offers of Proof.

No offers of proof may be requested or tendered.

E. JUDGING AND TEAM ADVANCEMENT

Rule 5.1 Finality of Decisions

All decisions of the judging panel are **FINAL**. The only exception is when there is a computational error in the math on a judge's scoresheet. In the event of a mathematical error, the trial will be awarded to the team with the higher number of ACTUAL ballots or points as determined by the corrected math, even if this result is different than the one announced to the teams by the judge(s).

PLEASE NOTE: Many trial lawyers say that trial is an art and not a science. Thus, as beauty is in the eye of the beholder, trial performance may also lie in the eye of the beholder. This competition makes every effort possible to establish objective criteria by which student competitors are to be evaluated. However, it is a fact of life that not every attorney will evaluate a competitor the same. It is also true that not every juror will evaluate an attorney and his or her case the same. Thus trial competitions are very similar to real trials and the tournament could not progress without the selection of winners. We have therefore developed a rather detailed scoring process for the judges to use. Once the scoring process is complete, the decision of the judge(s) is final, as long as the team's scores have been added correctly.

It is also true that judges will often make different rulings on motions and objections during trial. That is true in real life as well. It is an inherent part of the trial system based on judges' discretion. Therefore, as in real life, the rulings of the trial judge are final, even if you disagree.

This competition is intended to not only teach students about how the legal system functions, but also to provoke thought about the issues involved. We encourage instructors to use this packet as a vehicle for education toward both goals.

Rule 5.2 Composition of Judging Panels (Minnesota only)

Every effort is made to have two lawyers evaluating each trial at the regional level. One is the presiding judge, whose role is to both conduct the trial and to evaluate the teams' performances. The other judge's responsibility is solely that of an evaluator. Both judges have been instructed to rate the performance of all witnesses and attorneys on the team. In the event only one lawyer is able to judge a trial, the one score will be doubled for purposes of calculating the point differential score.

There will be three judges for each trial in the state finals. One judge will be the presiding judge, the other two will be the scoring judges. The scoring judges' evaluations will determine the trial winner. In the event of a tie, the presiding judge's ballot will determine the winner.

Rule 5.3 Score Sheets/Ballots (NHSMTC)

Rule 5.4 Completion of Score Sheets

Score sheets are to be completed individually by each judge without consultation with the other judges. Each scoring judge shall record a number of points (1-10) for each presentation of the trial. At the end of the trial, each judge shall total the sum of each team's individual point and place this sum in the Column Totals box.

Rule 5.5 Contest Format/Team Advancement (Minnesota only)

In the Minnesota competition there are three phases: invitationals, regionals (consisting of Round 1, Round 2 and playoffs), and the state finals.

Team attendance is expected at all trials in each phase of the competition for which the team is eligible.

1. Invitationals: It is highly recommended that each team participate in at least one scrimmage or invitational round prior to the first round of regional trials. Participation in these scrimmages is purely voluntary, and arrangements for space and judges are the responsibility of the team. Although invitational meets having no bearing on the outcome of the regional competition, they are an ideal chance for teams to practice their skills. These trials may be as formal or informal as desired (e.g., the attorney coaches may judge the trial which takes place in a classroom or the local courthouse may be used with a local judge invited to preside). Teams not entered in the competition can host an invitational as a culminating activity for the mock trial unit.

2. Regionals: For mock trial purposes, the state will be divided into regions. (The exact number of regions will be determined by the number of teams entered in the competition.) All teams shall compete in two trials, arguing once as the petitioner (prosecution) and once as the respondent (defendant). These trials will be held in February.

The MSBA shall set the trial schedule and determine which teams compete against each other. The fact that a team has scrimmaged another team will not preclude the same two teams from facing each other in competition. Teams from the same school may compete against each other at the option of the Mock Trial Manager.

After all teams in a region have argued two times, teams will be ranked based first upon the win-loss records, and second upon their cumulative point differential scores (see note below). The top half of the teams in the region (if the top half results in an uneven number of teams, it will be the top half, plus one.) will be considered regional finalists. There shall be no more than eight regional finalists per

region. Regional finalists will be divided into brackets and compete in a single elimination playoff format to determine the regional champion.

3. **State Finals:** Each regional champion will attend the State Competition. Only one team from each school shall compete at the state tournament. All teams will participate in at least three rounds of trials at the state level. The state champion is then eligible to represent Minnesota at the Minnesota Mock Trial.

Note: A team's point differential score is the total point spread between that team's score and its opponent's score in a given trial. For example, if team A scores 95 points in a trial and its opponent, team B, scores 92 points, then team A will have an adjusted score of plus 3 and team B will have an adjusted score of minus 3.

Rule 5.6 Power Matching/Seeding (NHSMTC Only; see Rule 5.51 for MN definition.)

Rule 5.7. Selection Of Sides For Championship Round (NHSMTC)

Rule 5.8 Effect of Bye/Default (NHSMTC)

F. DISPUTE RESOLUTION

Rule 6.1 Reporting a Rules Violation/Inside the Bar (NHSMTC Only)

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

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 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 counsel and/or student witnesses before lodging the notice of dispute or in preparing the form.

At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke the dispute procedure.

Rule 6.2 Dispute Resolution Procedure

During trial: If a team has serious reason to believe that a significant rules violation has occurred during the course of a trial, and that the violation involved an act that may be corrected during the course of the trial, a member of that team shall make an objection and communicate the complaint to the presiding judge. To the extent possible, the presiding judge will attempt to resolve the dispute during the course of the trial without disrupting the trial, and may consider the validity or invalidity of the complaint in his/her determination of which team gave the better performance during the trial.

After trial: After the trial has been completed, if a teacher coach or attorney coach has serious reason to believe that a significant rules violation has occurred of which their team members could not have been aware, the coach shall communicate the complaint to the presiding judge while the judges are still in the courtroom. In this case the presiding judge will give the teams two minutes to discuss the alleged violation among themselves.

Each team will then designate one team member to present its case to the judges. Each team must limit its statement to two minutes.

The judges will be allowed to consider the dispute before completing their scoresheets. The dispute may or may not affect the scoring. The matter will be left to the discretion of the judges. The judges' decision will be final.

Refer to Rule 4.231 for dealing with student team members' concerns about rules violation.

Rule 6.3 Effect of Violation on Score (NHSMTC)

Rule 6.4 Reporting of Rules Violation/Outside the Bar (NHSMTC)

MINNESOTA MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

In American trials complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence will probably be allowed by the judge. The burden is on the mock trial team to know the Minnesota High School Mock Trial Rules of Evidence 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 or underlined represent simplified or modified language.

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

Article I. General Provisions

Rule 101. Scope

These Minnesota High School Mock Trial Rules of Evidence govern the trial proceedings of the Minnesota High School Mock Trial Program.

Rule 102. Purpose and Construction

These Rules are intended to secure fairness in administration of the trials, eliminate unjust delay, and promote the laws of evidence so that the truth may be ascertained.

Article II. Judicial Notice

Rule 201. Judicial Notice

1. This rule governs only judicial notice of adjudicative facts.
2. A judicially noticed fact must be one not subject to reasonable dispute in that it is either
 - a. generally known within the territorial jurisdiction of the trial court or
 - b. capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
3. A judge or court shall take judicial notice if requested by a party and supplied with the necessary information.
4. Judicial notice may be taken at any stage of the proceeding.
5. In a civil action or proceeding, the judge shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the judge shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Article III. Reserved

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

All 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, 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

1. Character Evidence. Evidence of a person's character or character trait, is not admissible to prove action regarding a particular occasion, except:

- a. Character of accused -- Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;
- b. 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;
- c. Character of witness -- Evidence of the character of a witness as provided in Rules 607-609.

2. 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

1. 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.

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

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

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

However, such a statement is admissible (a) 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 (b) 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.

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 2.2.)

Rule 607. Who may Impeach (i.e., show that a witness should not be believed)

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

1. 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:
 - (a) the evidence may refer only to character for truthfulness or untruthfulness, and
 - (b) 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.

2. 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
 - (a) concerning the witness' character for truthfulness or untruthfulness, or
 - (b) 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

1. 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.

2. 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.

- 3 Effect of pardon, annulment, or certificate of rehabilitation. Evidence of a conviction is not admissible if (a) 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 (b) the conviction has been the subject of a pardon, other equivalent procedure based on a finding of innocence.

4. Juvenile adjudications. Evidence of juvenile adjudications is generally not admissible but the court may, 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.

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

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

- a. make the *questioning* and presentation effective for ascertaining the truth,
- b. avoid needless *use* of time, and
- c. protect witnesses from harassment or undue embarrassment.

2. 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 & admissible.

3. 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.

4. Redirect/Re-cross. After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross exam. Likewise, additional questions may be asked by the cross examining attorney on re-cross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.

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

1. Rationally based on the perception of the witness and
2. 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

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

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefor without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may, in any event, 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:

1. Statement: an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.
2. Declarant: a person who makes a statement.
3. Hearsay: 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.
4. A statement is *not* hearsay if:
 - a. 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
 - (i) 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
 - (ii) 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
 - (iii) one of identification of a person made after perceiving the person; or

- b. Admission by a party-opponent. -- The statement is offered against a party and is
- (i) the party's own statement in either an individual or a representative capacity or
 - (ii) a statement of which the party has manifested an adoption or belief in its truth, or
 - (iii) a statement by a person authorized by the party to make a statement concerning the subject, or
 - (iv) 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
 - (v) 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.

Example: Witness A testifies, "Some of the other tenants told me that Jones often failed to keep his apartments in good repair." This would not be admissible to prove that Jones often failed to keep his apartments in good repair, which was the matter asserted in the out-of-court statement. But, it might be admissible to prove that A had some warning that Jones did not keep his apartments in good repair, if that were an issue in the case, since it would not then be offered for the truth of the matter asserted.

Comment: Why should the complicated and confusing condition be added that the out-of-court statement is only hearsay when "offered for the truth of the matter asserted?" The answer is clear when we look to the primary reasons for the exclusion of hearsay, which are the absence in hearsay testimony of the normal safeguards of oath, confrontation, and cross-examination which test the credibility and accuracy of the out-of-court speaker.

For example, if Ms. Jones testified in court, "My best friend, Ms. Smith, told me that Bill was driving 80 miles per hour" and that out-of-court statement was offered to prove the truth of the matter asserted (that Bill was driving 80 miles per hour), we would be interested in Smith's credibility, i.e., her opportunity and capacity to observe, the accuracy of her reporting, and tendency to lie or tell the truth. The lack of an oath, confrontation, and cross-examination would make the admission into evidence of Smith's assertion about Bill unfair to the opposing party. If the statement was offered, however, to show that Ms. Smith could speak English, then its value would hinge on Ms. Jones' credibility (who is under oath, present, and subject to cross-examination) rather than Ms. Smith's, and it would not be hearsay.

Another example: While on the stand, the witness says, "The salesperson told me that the car had never been involved in an accident." This statement would not be hearsay if offered to prove that the salesman made such a representation to the witness. (The statement is not offered to prove the truth of the matter asserted.) If offered to prove that the car had never been in an accident, it would not be allowed because it would be hearsay.

Objections: "Objection. Counsel's question is seeking a hearsay response," or "Objection. The witness' answer is based on hearsay. I ask that the statement be stricken from the record."

Response to objection: "Your Honor, the testimony is not offered to prove the truth of the matter asserted, but only to show..."

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/physical conditions.** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, 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 made for purposes of medical diagnosis or treatment.**
5. **Recorded Recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.
6. **Records of regularly conducted activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
7. **Learned treatises.** To the extent called to the attention of an expert witness upon cross exam 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.
8. **Reputation as to character.** Reputation of a person's character among associates or in the community.
9. **Judgment of previous conviction.** Evidence of a judgment finding a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

Rule 804. Hearsay Exceptions; Declarant Unavailable

a. Definition of unavailability. "Unavailability as a witness" includes situations in which the declarant

1. 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. can't 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 proceeding, a statement made by a declarant while believing that his/her 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 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 1001. Title

These rules may be known and cited as the Minnesota High School Mock Trial Rules of Evidence.

SAMPLE TEAM ROSTER

Below is a suggested format for a roster sheet to be provided at the pre-trial conference to each of the judges at a trial. This sheet is for the judges' convenience in identifying the team members and the roles they will play. Some teams include a photo of each team member but this is completely optional.

MINNESOTA MOCK TRIAL PROGRAM

SIDE: Prosecution

LOCATION: Rock Cty Courthouse

DATE: February 1, 2005

ATTORNEYS

<u>Name</u>	<u>Gender</u>
Student _____	(M / F)
Opening, Direct of <u>insert witness' name here</u> , Cross of <u>insert witness' name here</u>	
Student _____	(M / F)
Direct of _____, Cross of _____	
Student _____	(M / F)
Direct of _____, Cross of _____, Closing	

WITNESSES (in order of appearance)

	<u>Gender</u>
<u>Witness #1 name</u>	<u>Student's name</u> (M / F)
<u>Witness #2 name</u>	<u>Student's name</u> (M / F)
<u>Witness #3 name</u>	<u>Student's name</u> (M / F)

Bailiff Student's Name

Timekeeper..... Student's Name

Minnesota High School Mock Trial State Champions

- 2004 Meadow Creek Christian, Andover**
- 2003 South, Minneapolis**
- 2002 South, Minneapolis**
- 2001 Meadow Creek Christian, Andover**
- 2000 Meadow Creek Christian, Andover**
- 1999 South, Minneapolis**
- 1998 Fergus Falls**
- 1997 St. Thomas Academy, Mendota Heights**
- 1996 Eden Prairie**
- 1995 Dassel-Cokato**
- 1994 Christ's Household of Faith, St. Paul**
- 1993 Kennedy, Bloomington**
- 1992 South, Minneapolis**
- 1991 Visitation, Mendota Heights**
- 1990 South, Minneapolis**
- 1989 Chisago Lakes**
- 1988 Waseca**
- 1987 Waseca**

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