

PART ONE
RULES OF COMPETITION

I. Team Structure

A. Team Roles

- i. A mock trial team may be a school or a community team and consists of a minimum of five to a maximum of eleven students (including alternates) on the official roster from the same high school (if the team is affiliated with a high school), a team advisor, and a legal advisor.
- ii. A community team is a mock trial team consisting of students from a single high school or multiple high schools which do not sponsor a mock trial team. A community team may only exist with the approval of OCLRE
- iii. Each team will have two attorneys (two different students), two witnesses (two different students), and a bailiff/timekeeper, playing Plaintiff and Defense sides of the case. If for any reason, including illness or other commitments, a team drops below the minimum number of students (five), the team will forfeit its right to continue in the competition. This is without exception.
- iv. An individual student can be listed and serve on only one team. Members of the team must be listed on the Official Team Roster that is available online. **Only those students listed on the Official Team Roster may participate in District, Regional and State Competition.**

B. Student Roles

- i. A student may play one role per side. Students may change roles when presenting the other side of the case. The roles are as follows:

Plaintiff

Attorney

Attorney

Witness

Witness

Timekeeper (Official)

Bailiff

Defense

Attorney

Attorney

Witness

Witness

Timekeeper (to assist with running clock)

Each team must call and question two witnesses. Each team must have a student serve as a timekeeper during the trial, and the Plaintiff team provides a bailiff. Each team must use two attorneys for each side played. Each attorney must conduct a direct and cross-examination and an opening or closing statement. Only the attorney who conducts the direct examination of witnesses may raise objections during the cross-examination of that witness.

- ii. A timekeeper will be supplied by both teams and **must** use **ONLY** the provided time cards in the competition manual, timekeeper's sheet and two stopwatches.
- iii. The student presentations should be the work product of the students themselves, guided, by team advisor(s) (see below) and legal advisor(s), if any. It is important that presentations be the students' work rather than having students simply memorize the words prepared by an adult.
- iv. OCLRE can, upon request, make revisions to materials and the competition format to accommodate students with I.E.P.'s and/or 504 plans.

C. Team Advisors

- i. Teams entering the Ohio Mock Trial Competition will be guided by a team advisor, who must be rostered. OCLRE believes the teams should be teacher-driven to ensure that educational standards are met.
- ii. All teams must be guided by an adult team advisor and may also use a legal advisor (not required).
 1. For teams associated with a school, the adult advisor must be authorized by the school (e.g. teacher, coach, counselor, designated parent, etc.).
 2. Teams seeking a legal advisor may contact OCLRE for assistance in finding a qualified volunteer.
 3. A legal advisor may not serve as an advisor for more than one school.
- iii. A legal advisor is not required, but is strongly suggested. The legal advisor enriches the students' knowledge by providing essential in-depth understanding of the law and its role in democracy. Legal advisors must be rostered.
- iv. Any adult advisor must appear on the roster for the team.
- v. Adult advisor(s) for the team are responsible for:
 1. Completing all required forms for registration and competition.
 2. Submitting any errata or competition questions to the mock trial coordinator.
 3. Serving as the chaperone for the team (or designating a substitute) at all levels of competition.
 4. Responding to requests for information from OCLRE.
- vi. Adults advising the team should serve as guides for the students in both the academic and legal components of the program. All work product should be the exclusive work of the students on the team.

II. Required Forms

A. Registration

- i. An official Competition Registration Form and registration fee for each team must be submitted online to OCLRE by **Friday, December 2, 2016**.
- ii. A confirmation will be sent from OCLRE to the email address on the registration form. If the competition registration form is not completed by **Friday, December 2, 2016** each team registered will be penalized a late registration fee of \$30. If the Competition Registration Form is received by OCLRE after **Monday, December 19, 2016** the team will be able to compete only on a space available basis and, if allowed to compete, will be penalized a late registration fee of \$30. If no space becomes available, the entire registration fee will be returned to the team.

B. Roster

- i. A team roster is required to complete the registration process. Team rosters must be submitted online via www.oclre.org by **December 20, 2017** in order for a team to be assigned to a competition site. Teams that submit rosters after this date will only be able to compete on a space-available basis. Additions/substitutions are permitted only by prior written approval from OCLRE, petitions for which must be submitted by an advisor, along with reasons to support the request. No further requests will be accepted after **January 18, 2017**.

- ii. No roster additions/substitutions will be permitted for ANY reason after the district competition occurring on **Friday, January 20, 2017**, though advisors are able to drop team members if necessary.
 - iii. Although the team members must remain the same for the District, Regional and State competition, the members may change the parts they play. It is strongly suggested that a school submit a complete roster of eleven team members to ensure alternates are available.
- C. Withdrawing a team from competition
- i. If a team drops out of the competition after submitting a registration form, a team advisor must complete the drop form found on the OCLRE Mock Trial website. (<http://www.oclre.org>) Teams may be eligible for a partial refund if they drop from the competition before the District competition.

III. Eligibility

- A. All students are eligible to compete on a mock trial team if they have been enrolled in their school during the academic year in which the competition occurs, and have not yet graduated.
- B. A student attending a career/technical, or “magnet” school that sponsors a mock trial team whose home school also sponsors a mock trial team may participate on either, but not both, teams.
- C. A student at a school which does not have a mock trial team may compete on a team at another area high school or join a community program with permission from OCLRE.
- D. A school may enter more than one team. Every effort will be made to accommodate second, third or more teams; however, schools fielding more than one team may be required to compete outside their home county, and/or at more than one competition site.
- E. A student from a school that has a mock trial team may compete on a community team provided that no more than 50 percent of the students on the community team are from a school with a mock trial team. No student may participate on both a school and community team.

IV. Competition Structure

- A. Rules for All Levels of Competition
 - i. Competition consists of two trials at the district level, two trials at the regional level and at least one trial at the state level.
 - ii. Teams registered for the Ohio Mock Trial competition will be placed at a competition site based on travel distance and capacity. Schools with a travel restriction that would prevent them from leaving their home county must indicate their restriction on their registration form. OCLRE will make every effort to honor valid travel restrictions.
 - iii. OCLRE will attempt to provide teams with side playing first information no earlier than two days before the district, regional and state competitions. This information will be posted to the OCLRE website. No side playing first requests will be considered for any reason. Be aware that changes can be made to side playing first up until the start of the trial without notice due to unforeseen circumstances (e.g.

the addition or drop of teams or weather).

- iv. All teams will be matched at random at the district, regional and state competitions. As a result, teams from a school with two or more teams could be randomly matched against each other. Two teams that play each other in one trial cannot be paired against each other in the following trial.
- v. No requests for assignments, pairings, or side-playing first will be accepted. Scrimmage arrangements are the responsibility, and at the discretion of, the team advisor. This may mean that if a team scrimmages a team in the same area, they could meet again in the competition.
- vi. If possible, no more than 50 percent of teams in a district competition site will be from the same school. If the majority of the teams assigned to one competition site are from the same school, OCLRE will make an effort to select a team(s) at random to travel to an OCLRE-selected location to compete.
- vii. At all levels of competition, OCLRE will attempt to place an even number of teams at each site. If there are an odd number of teams present at the site, a team with an adequate number of members will be assigned to “split” (play both Plaintiff and Defense at the same time in separate courtrooms). If a split is required at a competition site, OCLRE will randomly choose a team containing eight or more students. Teams that cannot split can apply for and explain an exemption on the roster form.
- viii. After each competition, score sheets will be made available to teams with priority given to teams that are advancing to the next level (e.g. teams advancing from districts to regionals). All score sheets will be made available no later than 1 month after the conclusion of the state competition. Scoring errors must be brought to OCLRE’s attention using the included Scoring Error Notification Form within three business days of the competition, or receipt of the score sheets (whichever is later.)
- ix. If there are questions about the mock trial case or competition rules, only the team advisor and/or legal advisor may submit questions to the case and competition committees by contacting Caitlyn Smith, Mock Trial coordinator, at 614-485-3510 or csmith@oclr.org. The question must include the name and e-mail address of the submitting advisor. The question will be forwarded to the case or competition committee depending on the nature of the question, and if necessary, the answer will be posted on an errata sheet which can be found at <http://www.oclr.org>. The errata sheet will be updated every two weeks, beginning **Tuesday, October 18 2016** and ending on **Tuesday, January 10, 2017**. The last day to submit a question is **Tuesday, January 3, 2017**.

B. District Competition

- i. In the district competition, each team will participate in two trials and will play both Plaintiff and Defense.
- ii. District site assignments will be released on **Wednesday, January 4, 2017** on the OCLRE website. Every effort will be made to place schools in their home county, but teams may be asked to travel up to 60 miles for the district competition.
 1. If a team is unable to travel, the advisor may apply for a travel restriction on the registration form. Additional documentation may be required in order for the committee to accept the restriction.

C. Regional Competition

- i. In the Regional competition, each team will participate in two trials and will play both Plaintiff and Defense. Regional site assignments will be released on **February 1, 2017**.
- ii. Teams that advance to the regional competition will be placed in a location where there is space available, and OCLRE cannot prioritize keeping any teams in their home county.
- iii. OCLRE will make every effort to assign at least 4 teams to each regional site.
- iv. In the event no team at a regional competition wins **BOTH** trials, one team with the he highest number of total points (excluding the team performance score) will advance to the state competition.

D. State Competition

- i. Day One of State Competition
 1. Teams that advance to the state competition must travel to Columbus to compete at the Franklin County Courthouse.
 2. At the State Competition, teams will advance in a single elimination tournament. Winners will play winners and losing teams will not advance (see exception listed below). Advancing teams will be matched at random, and to the greatest extent possible, each side played in the previous trial switched.
 3. OCLRE has the option of providing only one trial after determining how many teams will be present at the State Competition. At the state competition, teams can be eliminated after they lose one trial, though OCLRE retains the authority to allow each team to compete in two trials depending on the number of teams advancing to the state competition.
 4. Once pairings have been determined for the second trial, they will be announced by OCLRE. After the second trial, OCLRE will announce advancing teams but **NOT** draw pairings until day two of the competition.

Number of Advancing Teams After Trial 1 and 2	Result
0	8 teams will be selected at random from the group of teams with one loss to complete the quarterfinals bracket and Trial 3 will be played with 8 teams.
1	The one advancing team will be named the State Champion and no further trials will be played.
2	Trial 3 will be held as the State Final trial.
3	1 team will be selected at random from the group of teams with one loss to bring the remaining number of competing teams to 4.
4	Trial 3 will be held as the semi-final round with the remaining 4 teams.
5, 6, or 7	The number of teams necessary to bring the remaining number of teams to 8 shall be selected at random from the group of teams with one loss to complete the quarterfinal bracket.
8	The Quarter-final round will begin on Day 2 with the 8 advancing teams
9-16	Teams participating in the Play-In Round will be drawn at random from the pool of advancing teams. For example, if 11 teams advance from Trial 2, then Trial 3 would have 3 matchups with 6 teams and 5 teams will automatically move on to Trial 4. From the 6 teams that compete in the Play-In Round, the 3 winning teams will join the 5 teams that automatically advanced, for a total of 8 teams in Trial 4. Play-In Round participants will be announced the morning of Day 2 at the State Competition. Teams not competing in the Play-In Round will automatically advance to the next trial. After the Play-In Round, the remaining 8 teams will then proceed with Trial 3 of the state competition.

ii. Day Two of State Competition

1. Play-In Round (As Needed)

- a. At the end of the first day of competition, OCLRE will announce the advancing teams. If more than 8 teams qualify for advancement, OCLRE will facilitate a play-in round, which will occur before the Quarterfinal Round on Day Two of the competition.
- b. In a play-in round, OCLRE will draw from the pool of eligible teams to determine which teams will compete. The number of trials will depend on how many teams need to be eliminated in order to get to eight. The first team drawn for each trial will play Plaintiff, the second will play Defense.
- c. After the play-in round, advancing teams will be announced, and OCLRE will prepare to draw new pairings for the quarterfinal rounds.

2. Quarterfinals

- a. In the Quarterfinal rounds, teams will have an all new drawing in which the first team drawn will play Plaintiff, and the second team will play Defense.
- b. Non-advancing teams will be recognized before the semifinal round.

3. Semifinals
 - a. Teams advancing to the semifinal round will be matched at random, and to the greatest extent possible, each side played in the previous trial switched.
 - iii. Day Three of State Competition
 1. Championship Round
 - a. The championship round will occur on the third day of competition, at the Ohio Statehouse.
 - b. A coin flip to determine sides played will be done in the presence of the teams the morning of the championship round. The team that comes first alphabetically will play heads, the team that comes second will play tails. The team that “wins” the coin toss will play the Plaintiff.
- E. National Competition
- i. The state champion earns the right to represent Ohio at the National High School Mock Trial Competition, if one is held, and will receive a stipend from OCLRE to help defray expenses for national competition.
 - ii. If the state champion team decides to represent Ohio in the National High School Mock Trial Competition, all state championship team members **MUST** be given the option of attending. If a team member is unable to attend for any reason, a written note must be provided to OCLRE by the student and the principal of the participating high school before the stipend is sent.
 1. OCLRE understands that the winning team may need to add members to complete a roster for the national competition, and team members may be added as needed from the winning school. If team members are added, they must be confirmed by contacting OCLRE before the stipend is sent.
 2. The winning team should contact OCLRE following the state competition to receive further information.

V. Competition Site Logistics

- A. Participants for all OCLRE programs are expected to read, and school administrators/advisors are expected to sign the behavior standards at the time that the team registers with OCLRE for the Mock Trial Competition. It is expected that all standards will be adhered to by any students, school staff, or guests of the school/team. Violation of behavior standards could lead to the disqualification of school/group and immediate dismissal from the event.
- B. Teachers must report to the registration table to register the team and confirm their official roster (submitted online prior to competition).
- C. Teams will receive score sheets upon check-in at the district, regional and state competition.
 - i. Teams will complete the score sheets prior to the pre-trial conference. This requires the cooperation of teams, team advisors, and legal advisors.
 - ii. Please complete the team’s relevant information on **ONE score sheet when playing Plaintiff and TWO score sheets when playing Defense.**
 - iii. Upon meeting with the other team, both will exchange score sheets and fill in the needed information before the judges meet for the pre-trial conference. **DO**

NOT SEPARATE THE SCORESHEET COPIES. Score sheets must be completed to identify team members and their roles.

- D. Courtroom assignments will be provided to teams at registration. Pairings will not be released in advance.
- E. The district/regional coordinator will not under any circumstances shift teams and times on the day of the competition, nor redraw pairings.
 - i. The District/Regional coordinator will not change pairings made by OCLRE under any circumstances. If an issue with pairings is discovered, coordinators should notify OCLRE as soon as possible to request new pairings.
- F. Teams (including team and legal advisors and others associated with and supporting competing teams) may not observe other trials but team members may view their own team members' trials when they themselves are not competing.
- G. Teams may videotape their own trials at the presiding judge's discretion. Video may be shared only with the teams featured in the specific videos.
- H. Teams may not use a laptop computer, tablet, phone or other similar device during the Mock Trial competition.
- I. The competition will run as scheduled RAIN or SHINE. The only way to guarantee that a team will compete is to arrive at an open competition site. Teams travel to and from Mock Trial at their own risk, and each team's advisor must determine whether it is safe for the team to travel to the competition site.
- J. OCLRE is not responsible for the safety of team members who travel to or from the Mock Trial competition. Teams **MUST** immediately contact the OCLRE office **and** the district/regional/state coordinator if weather or any other reason prevents their participation.
 - i. In the event that a significant number of teams are not able to compete due to weather at the district or regional competitions, OCLRE will make an effort to provide a suitable make-up competition for those teams, but cannot guarantee this will occur. If a make-up competition occurs, it will be scheduled within seven days of the original competition date established by OCLRE and teams may have to travel and compete on a weekend.
- K. On the day of the competition, if a situation develops whereby a team is left without an opponent, teams already competing at that site will be expected to fill in. If a team can play both sides at the same time (split), it will be assigned to do so.
- L. All students should wear a nametag so the judges can identify them. Witnesses should wear the name of the character they play. All others should wear their own names. It is the responsibility of the team to bring nametags with them. Do not list the school name on the nametag unless advised to do so by the District/Regional Coordinator.
- M. Team and legal advisors are the **ONLY** individuals from each team who may approach a site competition coordinator or volunteer with questions or concerns. Students, parents, and guests should not address coordinators or volunteers directly.
- N. In order to compete, all teams must be accompanied on site, at the district, regional and state competitions, by a teacher or school official, legal advisor or other designated adult. If a school has more than one team, each team must be subject to the supervision of a designated adult who can adequately supervise the team's behavior. While the supervisor does not need to be in the room at all times, he or she must be available to respond promptly if there is a need. The adult shall be listed on the team roster as the "designated adult supervisor." Failure to comply with this rule may, at the discretion of the competition coordinator, be grounds for disqualification.
- O. All team members and any props or uniforms must pass through local courtroom security. As a general rule, courtroom security will not allow any weapon or object that looks like a

weapon into the courthouse. Be sure to leave adequate time and be prepared to comply with courthouse security.

VI. Judging and Scoring Guidelines

A. Judging

- i. Every effort will be made to provide each trial with a three judge panel, all of whom will complete score sheets. In some instances, a trial may have to move forward with only two judges. If this scenario occurs, and the two judges split on which team won the trial, the judges will add each team's total points. If the team's total points are tied, the scoring judge's decision will be the determining score.
- ii. The judges will hear the trial as a "bench trial." This is not a jury trial and students should address the Court and not a jury. One judge will serve as the presiding judge and will control the courtroom and rule on motions and objections. The other judge(s) will serve as scoring judges and evaluate the team and individual performances.
- iii. All attempts will be made not to have the same judicial panel assigned to judge the same team more than one time at the same level of competition.
- iv. All judges will receive a case summary, competition rules and scoring procedures.
- v. If judicial robes are available, judges may be asked to wear the robe during competition.
- vi. Only the presiding judge is to speak during a trial. The presiding judge's comments are limited to ruling on objections and do not include questioning witnesses or counsel.
- vii. The trial will be judged based on individual and team performance, not the merits of the case.
- viii. Attorney and witness awards will be based on the scoring judges' points added together and **are not to be considered as "consolation" prizes**. If there is a tie between the scoring judges' points on a three judge panel, the Presiding Judge's points will be considered to break the tie. If a tie still exists, the judicial panel will make the decision based on a general consensus. In a two judge panel the attorney and witness awards will be based on both judges' points added together. If a tie exists on a two judge panel, the scoring judge will decide the winner.

B. Scoring Process

- i. Each judge will evaluate each team member on a scale of 1-10. The team will be scored on a 1-10 point scale for its overall performance.
 1. **At the district, regional and state trials**, each judge will score individual and team performances using whole numbers only. The team that earns the most points on an individual judge's score sheet is the winner of that ballot. A judge CANNOT have a tie between the two teams. If both scoring judges agree on the winner, that team will advance. If the scoring judges do not agree on the winner, the presiding judge's ballot will also be considered, with the team receiving the majority of the three ballots winning the trial.
- ii. All teams who win both of their trials, determined by receiving two ballots per trial, will advance in competition from districts to regionals and regionals to states.

SCORING JUDGE RUBRIC

VII. Scoring Benchmarks

A. Scoring Judge Rubric

1. Attorney Performance Indicators:

- ✓ *Advocacy skills:* creative, organized and convincing presentation
- ✓ *Understanding of legal issues:* ability to apply law and facts to case
- ✓ *Oratorical skills:* poised, able to think on feet, extemporaneous delivery
- ✓ *Demeanor/Professionalism/Civility:* models respectful and professional behavior at all times towards the court, fellow team members, advisors, and opposing teams.
- ✓ *Mastery of trial technique:* effective use of objections, appropriate form of questioning, ability to recognize and rehabilitate own weaknesses, mitigate opponent's good points
- ✓ Did not ask questions that called for an unfair extrapolation from the witness
- ✓ Did not make excessive, unnecessary objections when the invention of fact had no material impact.
- ✓ *Opening statement:* provided case overview, identified theory of the case, discussed the burden of proof, stated the relief requested and was non-argumentative
- ✓ *Closing argument:* continued theory of the case introduced in opening statement, summarized the evidence, applied the applicable law, discussed the burden of proof, concentrated on the important - not the trivial- and overall was persuasive
- ✓ *Complies with Competition Rules*

2. Witness Performance Indicators:

- ✓ Knowledge of case facts and theory of team's case
- ✓ Observant of courtroom decorum
- ✓ Believability of characterization and convincing in testimony
- ✓ Avoided unnecessarily long and/or non-responsive answers on cross examination
- ✓ Articulate and responsive
- ✓ Did not make unfair extrapolations
- ✓ Complies with Competition Rules

Points, Performance and Evaluation Criteria

- 9-10 **Excellent:** Exhibits mastery of all procedural and substantive elements. Significantly advances team effort.
- 7-8 **Good:** Proficient in most procedural and substantive elements. Helps team on the whole.
- 5-6 **Fair:** Moderately comfortable with procedural and substantive elements of the trial but contains some imprecise use of trial elements or lacks polish.
- 3-4 **Weak:** Does not advance team effort. Minimal comprehension of procedural and substantive trial elements.
- 1-2 **Poor:** No evidence of procedural and substantive trial elements.

3. Team Effort Indicators:

- ✓ Did the team establish a credible theme for its argument?
- ✓ Did the team select appropriate witnesses to prove the argument?
- ✓ Was witness examination organized?
- ✓ Did witness examination develop the argument?
- ✓ Was the team's case carefully crafted and skillfully delivered?
- ✓ Complies with Competition Rules

4. Penalties

If a majority of the judging panel determines that there has been a material violation of a competition rule that affected the fairness of the trial, 5 points shall be deducted from the offending team's score on each judge's score-sheet. If the panel believes that a 5-point penalty is insufficient given the seriousness of the violation, the panel shall consult with the Competition Committee, which may impose additional sanctions including, but not limited to, disqualification. One example of a material rules violation warranting a serious penalty would be communication between team members and their teacher or legal advisor, whether through signals, notes, or electronically. All objections must be made before the presiding judge retires to deliberate. After that, complaints may be made only by the academic advisor after the competition in writing using the complaint form. Such complaints will not alter the decisions of the judicial panel.

PART TWO PROCEDURAL RULES

I. Trial Rules and Procedures

A. Preparation

The case and competition sections of the Ohio Mock Trial notebook contain all materials necessary to participate in the competition. Students playing the roles of attorneys may make appropriate use of the case materials, including the legal briefs, the Judge's Order and all of the witness statements, subject to all other applicable rules of the mock trial competition. However, this does not include the case introduction, which is not considered a formal part of the case materials. For purposes of the mock trial, all documentary facts are stipulated as admissible evidence so they need not be formally introduced in court. Supplemental materials are also provided to help teachers teach the case and explain the legal issues and procedures involved. These materials may not be introduced into the trial; they are for educational purposes only.

If a legal citation is referred to in the case, it may be utilized in development of the legal theory and cited. However, only facts and information given about that citation in the case materials may be communicated to the court.

For example, if the Defendant's brief states,

"The Fourth Amendment to the United States Constitution protects a person from uninvited governmental intrusions when that person has a legitimate expectation of privacy that society is willing to recognize as reasonable. Katz v. United States, 389 U.S. 347 (1967); O'Connor v. Ortega, 480 U.S. 709 (1987),"

and the case law provided in Mock Trial Case materials includes Katz but not O'Connor, then teams may use the full Katz case. However, they may not use any part of O'Connor which is not quoted or summarized by the case materials.

It is the responsibility of the mock trial team to present and advocate the law and facts of the case to the judges. As in real life, the mock trial team should not assume judges know the facts of the case.

B. Time Limits

1. A trial is scheduled for two hours including all activities beginning with the pre-trial conference and ending with the closing of court. The presiding judge will enforce the time limit and may, at his/her discretion, grant a time extension in the interest of fairness.
2. Each team must supply a student timekeeper. However, the team playing the Plaintiff will supply the Official Timekeeper. Both teams may flash the cards provided in the manual in such a way that all participants can see them.
3. ***Timing will begin at the Opening Statement, after the introductions are made.***
4. If a time-keeping discrepancy of **more than 15 seconds** is discovered between the Plaintiff and Defense teams' timekeepers, the timekeepers should notify the presiding judge as soon as the discrepancy is discovered. In this event, one of the timekeepers should stand, wait to be recognized, and say "Your honor, we have a time discrepancy of more than 15 seconds." The presiding judge will ask the nature of the discrepancy and then rule on the discrepancy before the trial continues. Once the presiding judge rules, the timekeepers shall synchronize their stop watches to match the ruling of the presiding judge. The decisions of the

presiding judge regarding timing disputes are final, and no timekeeping disputes will be entertained after the trial has concluded.

5. The time clock will stop for objections and responses.
6. The timekeeper will guide the judges' comments by showing a 1:00 minute card and a stop card 11 minutes and 12 minutes into the judge's comments.

C. Courtroom Setting

1. Plaintiff counsel on the right (facing bench).
2. Defendant's counsel on the left (facing bench).
3. Witnesses behind counsel tables.
4. Judges on the bench (or, if necessary, in the jury box).
5. Bailiff in front of the bench.
6. The Timekeepers (unless also acting as bailiff) and video camera person in the jury box, if possible, and if video is permitted by presiding judge (see rule D.1).
7. Teachers and legal advisors behind the teams.

D. Conduct During Trial and Trial Sequence

1. The presiding judge controls the courtroom. S/he may ask anyone to leave, if necessary. Teams may videotape their own trials at the presiding judge's discretion. Videos may be shared only with the teams featured in the specific videos.
2. Until closing arguments have concluded, team attorneys may communicate only with each other. During the post-trial objection phase of the trial, attorneys may communicate with the witnesses, bailiff and timekeeper performing in the actual round. However, none of the performing team members may communicate in any way with teachers, legal advisors, team members not performing in that round or any other observers once the judges enter the courtroom and the bailiff opens the court. This restriction includes breaks during the trial.
3. If a team prepares a third witness for trial who they do not call, that third witness may not participate in the trial in any way including, but not limited to, sitting with the other witnesses and conferring during the trial.
4. Attorneys may speak from a lectern in the center of the courtroom, if one is available. **Lecterns or other furnishings may not be moved into or out of any courtroom at any time.** The Plaintiff's side is responsible for returning the lectern and chairs to original position inside the courtroom following the trial. At the discretion of the presiding judge, attorneys may walk about the courtroom. The preference of the presiding judge should be raised and determined at the pre-trial conference.
5. No furnishing/equipment may be moved into, or from the courtroom. Not all courtrooms are equipped with the same furnishings; therefore, blackboards and other visual aids may not be used. The rule on exhibits prevails.
6. The trial, including judges' comments, should not last longer than two hours.
7. Preparing Ballots for the Pre-Trial Conference
Prior to the pre-trial conference, both teams roster the scoresheets for the round. This requires the teams to disclose which witnesses they will be calling. Teams must also disclose which segment of the trial each attorney will perform. All information will be recorded in the (3) three ballots provided; (2) two for the scoring judges and (1) one for the presiding judge. These completed ballots will be given to the judges at the pre-trial conference.

8. Pre-trial Conference (10 minutes)
Student attorneys will participate in a pre-trial conference with their judges. Teachers, legal advisors and/or designated adult supervisors are encouraged to attend. This brief orientation will include a discussion of competition rules and any questions raised by the participants. No motions will be entertained during the pre-trial conference. Pre-trial conference may occur at the judge's bench or in a separate room, if available, at the judges' discretion. Rostered score sheets will be given to the judges at the pre-trial conference. The Official Timekeeper will be identified and all time cards approved by the presiding judge.
9. Opening the Court
When the judges enter the courtroom, the bailiff opens the court by saying:
"All rise. Hear ye, hear ye, the U.S. District Court for the Middle District of Ohio [or whatever the name of the court may be], Mock City, Ohio [or whatever town in which the court is located] is open pursuant to adjournment. All having business before this honorable court draw near, give attention, and you shall be heard. You may be seated."
10. Opening Statements (4 minutes' maximum per statement)
The presiding judge should ask counsel for the Plaintiff to make an opening statement. The Plaintiff's counsel should introduce themselves and their team members and the roles they are playing and then present the opening statement. The same procedure is used with Defendant's counsel. The timekeeper will stop and then reset the stopwatch to zero after opening statements.
11. Swearing in the Witnesses
 - a. The bailiff swears in with:
"Will all witnesses and parties who are to give testimony in these proceedings please step to the front?"
 - b. Then the bailiff holds up his/her right hand and says:
"Please raise your right hand. Do you solemnly swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth and your testimony will comply with the Rules of the Ohio Mock Trial Competition?"
 - c. All witnesses will remain in the courtroom but will be deemed constructively separated. Therefore, it should be assumed that witnesses are unaware of prior trial testimony and no motion for separation of witnesses shall be necessary.
12. Testimony of Witnesses (Direct/Re-direct 20 minutes; Cross/Re-Cross 18 minutes)
 - a. Counsel for the Plaintiff and Defense will each call two witnesses. Plaintiff attorneys must call Plaintiff witnesses and Defense attorneys must call Defense witnesses.
 - b. Counsel for the Plaintiff will present their case first. The presiding judge will ask counsel for Plaintiff to call the first witness. The witness will then testify in the following examination sequence:
 - o Direct
 - o Cross
 - o Re-Direct

o Re-Cross

When the Plaintiff's counsel calls the second witness, the witness will be called to the stand and the procedure repeated.

- c. The presiding judge will then ask counsel for Defense to call their first witness. Defense follows the same procedure as the Plaintiff.

Witnesses are bound by their written statements.

- e. Witness statements may be used by counsel to impeach a witness or refresh a witness's memory in accordance with the Mock Trial Simplified Rules of Evidence. Witnesses may not, however, bring witness statements or notes to use as a trial aid during testimony.
- f. Fair extrapolations are permitted only during cross-examination if they are (i) consistent with the facts contained in the case materials and (ii) do not materially affect the witness's testimony. If a witness invents an answer that is likely to affect the outcome of the trial, the opposition may object. **Teams that intentionally and frequently stray outside the case materials will be penalized.**
- g. If an attorney who is cross-examining a witness asks a question, the answer to which is not included in the witness's written statement or deposition, the witness is free to "create" an answer as long as it is responsive to the question, does not contain unnecessary elaboration beyond the scope of the witness statement, and does not contradict the witness statement.

13. Exhibits:

Only exhibits that are part of the case materials may be used as visual aids. If used, the exact page from the case materials may be reproduced on 8½ x 11 paper, but not bound in plastic or modified in any way. The trial proceedings are governed by the Simplified Ohio Rules of Evidence found in this casebook.

14. Closing Arguments (5 minutes' maximum each, with an additional 2 minutes Plaintiff rebuttal)

The presiding judge will allow attorneys two minutes (no longer) before closing arguments to incorporate results from cross or to collect their thoughts. During this time the timekeepers will stop both stopwatches and reset to zero. No one shall leave the courtroom and all rules on communication during the trial prevail. The presiding judge will ask Plaintiff's and Defendant's counsel if they are ready to present closing arguments. Counsel for the Plaintiff will present his/her closing argument first, followed by Defense's closing argument. Counsel for the Plaintiff has the option for a two-minute rebuttal after Defense's closing argument. These two minutes do not have to be requested in advance. The optional rebuttal is limited to the scope of the Defense's closing argument.

15. Objections During the Trial

In addition to evidentiary objections, objections may be made during the trial by an attorney who believes that any rule set forth in the Rules of Competition has been violated. For example, if an exhibit is mounted or modified, the other team's attorney may state an objection. Similarly, if an attorney observes what appears to be communication between a team and their teacher during trial, the attorney may state an objection. In making these objections, the procedure set forth for stating evidentiary objections (Simplified Ohio Rules of Evidence and Common Objections) should be followed. As with evidentiary objections, the objection must

be made at the time of the claimed violation, and the attorneys knew or should have known of the violation. No objections may be raised during opening statements or closing arguments. The presiding judge may make rulings as appear appropriate, including prohibiting use of an exhibit that has been modified, requiring compliance with the rule, admonishing individuals or teams, deducting penalty points from the team's score (such deductions to be done only by the entire panel during post-trial deliberations;), etc. All judges will not interpret the rules and guidelines the same way. The judge's decision, however, is final, and no appeals procedure is available. The clock stops for objections and judge's ruling.

16. Post-Trial Objections

After closing arguments are completed, and after the scoring judges have been excused to begin deliberation in chambers, the presiding judge will ask, "Does either team have serious reason to believe that a material violation of any rule has occurred during this trial? I will remain on the bench for three minutes, during which time any protest or objection may be brought to my attention by a team attorney. The team attorneys may communicate with all performing team members (witnesses, bailiff and timekeeper) involved in this actual round but may not communicate in any way with legal advisors, teachers, or anyone outside their performing team members."

- a. Motions for directed verdict or dismissal of the case are not permitted.
- b. Objections that could have been raised during the trial, including evidentiary objections, may not be raised at this time.

If no objection is made within three minutes, the presiding judge will mark his/her score sheet and then retire to assist with deliberations. If there is an objection, one of the attorneys for the team will stand and state the objection and the ground for objection. The judge may conduct an inquiry in the manner s/he deems appropriate; the judge in his/her discretion may solicit a response and/or inquire further into the facts. The presiding judge does not announce a finding but retires to assist with deliberations. The presiding judge then consults with the scoring judges and may consult with a member of the OCLRE staff.

17. Gross Rules Violation

If a majority of the judging panel determines that there has been a material violation of competition rules that affected the fairness of the trial, 5 points shall be deducted from the offending team's score on each judge's score-sheet. If the panel believes that a 5-point penalty is insufficient given the seriousness of the violation, the panel shall consult with the Competition Committee, which may impose additional sanctions including but not limited to disqualification. One example of a material rules violation warranting a serious penalty would be communication between team members and their teacher or legal advisor, whether through signals, notes, or electronically. All objections must be made before the presiding judge retires to deliberate. After the trial, complaints can only be made, in writing, for the competition committee to review. All decisions are presumed to be final, but will be thoroughly reviewed.

18. Deliberation

Judicial panelists retire to chambers to add their ballots and discuss remarks to the teams. Scoring judges will also add points to determine the recipients of the outstanding witness and outstanding attorney awards. The Presiding Judge Final

Tally Sheet and ALL three competition score sheets will be completed immediately after each trial by the two scoring judges and presiding judge and returned to the competition coordinator. Judges may not keep score sheets between trials.

19. Conclusion of Trial

The bailiff calls court back in session with:

“All rise. Court is now back in session.”

After the judges are seated, the bailiff says:

“You may be seated.”

20. Debriefing and Announcement of Outstanding Witness and Attorney Awards

The presiding judge will provide debriefing comments on the strengths and weaknesses of each team’s performance. The debrief should be precise, and last no more than 12 minutes. The timekeeper will give the judge a one-minute warning and then a “stop.”

a. Any penalties assessed on a team will be announced.

b. The scoring judges will announce the outstanding witness and attorney awards, discuss the highlights of their performances, and present their certificates.

c. **The winning team and scoring information will not be announced.**

Results will be announced and posted by the Competition Coordinator at the end of the district and regional competition and at the conclusion of appropriate rounds of state competition. The official competition score sheet may be posted by the district/regional coordinator at the end of the competition. After the district competition, score sheets from the district competition will be sent to the teams advancing to the regional competition. Individual team score sheets for all teams from all levels of competition will be provided no later than **April 10, 2017**, one month following the state competition.

d. Decisions of the judicial panel are final. If an advisor has a complaint, s/he must complete an official complaint form, which will be reviewed by the competition committee. Follow-up on the status of the complaint will be communicated to team advisors as-needed.

21. Closing of Court

a. The presiding judge will recognize and thank the teachers, legal advisors, students, and families for their support and will turn the court back to the bailiff.

b. The bailiff closes the official proceeding with:

“All rise. This honorable court is hereby adjourned.”

c. Both teams are responsible for leaving the courtroom in the same condition as it was found. Both teams are responsible for taking their own papers and notebooks out and disposing of them properly.

PART THREE
SIMPLIFIED OHIO RULES OF EVIDENCE

Rules Unique to Mock Trial

I. Invention of Facts and Extrapolation (special rules for the Ohio Mock Trial Competition)

The object of these rules is to prevent a team from “creating” facts not in the material to gain an unfair advantage over the opposing team.

Invention of Facts - Direct Examination. **On direct examination the witness is limited to the facts given in his/her own written statement.** If the witness goes beyond the facts given (adds new facts or speculates about facts), the testimony may be objected to by the opposing counsel as speculation or as invention of facts outside the case materials. If a witness testifies *in contradiction* of a fact given in the witness statement, opposing counsel should impeach the witness’s testimony during cross-examination. [See also, Competition Instructions, “Testimony of Witnesses—Guidelines.”]

Invention of Facts – Cross Examination. If on cross-examination a witness is asked a question, the answer to which is not contained in the facts given in the witness statement, the witness may respond with any answer, so long as it is responsive to the question, does not contain unnecessary elaboration beyond the scope of the witness statement, and does not contradict the witness statement. An answer which is unresponsive or unnecessarily elaborate may be objected to by the cross-examining attorney. An answer which is contrary to the witness statement may be impeached by the cross-examining attorney. [See also, Competition Instructions, “Testimony of Witnesses—Guidelines”].

Example

The limits on fair extrapolation apply only to cross examination, and no extrapolation is permitted on direct examination.

An accident reconstruction expert (Mr. Smith) has testified that the accident was caused by the failure of the defendant to maintain an assured clear distance ahead. The defendant has claimed that he was undergoing a type of epileptic seizure when the driver ahead stopped abruptly. The accident reconstructionist testifies that even a person experiencing this kind of epileptic seizure would have seen the car brake abruptly.

1. Unnecessary Elaboration

Cross-examiner: “But you’re not a neurologist, are you, Mr. Smith?”

Mr. Smith: “As a matter of fact, I have a Ph.D. in Neurology from Johns Hopkins University and have written extensively on epileptic seizures.”

If there is no hint in the case materials that Mr. Smith has expertise in neurology, it would be regarded as an unnecessary elaboration

Elaboration necessitated by the Question

Cross-examiner: “Have you testified before as an expert in accident reconstruction, or is this the first time that you have ever testified?”

Mr. Smith: “I have testified in 27 trials”

It may be reasonable for the expert to claim he has testified in 27 trials, if his age and background make that plausible, even if there is nothing in the case materials to reflect an answer to that question. It is an elaboration necessitated by the question.

II. Scope of Examinations

Scope of Direct Examination An attorney questions the witness she/he has called to stand. On direct examination an attorney may inquire as to any relevant facts of which the witness has first-hand, personal knowledge.

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's 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.

Re-Direct Examination After cross examination, additional questions may be asked by the direct examining attorney, but such questions are limited to matters raised by the opposing attorney on cross-examination. Just as on direct examination, leading questions are not permitted on re-direct. *Comment:* If the credibility or reputation for truthfulness of the witness has been attacked successfully on cross-examination, the attorney whose witness has been damaged may wish to ask questions to "rehabilitate" the witness (save the witness's truth-telling image). Re-direct examination may also be used to strengthen a positive fact that was weakened by the cross-examination. Re-direct examination is not required. A good rule to follow is: if it isn't broken, don't fix it.

Examples:

1. **Cross Examination of physician called by Plaintiff in murder case:**

Attorney: Doctor, you testified on direct that the defendant died of arsenic poisoning, correct?

Witness: Yes.

Attorney: Isn't it true that you have a deposition in which you testified that you did not know the cause of death?

Witness: Yes, that's true.

Re-Direct:

Attorney: Doctor, why did you testify in your deposition that you did not know the defendant's cause of death?

Witness: I had not yet received all of the test results which allowed me to conclude the defendant died of arsenic poisoning.

2. **Cross Examination:**

Attorney: Doctor, isn't it true the result of test X points away from a finding of arsenic poisoning?

Witness: Yes.

Re-Direct:

Attorney: Doctor, why did you conclude that the defendant died of arsenic poisoning even though test X pointed away from arsenic poisoning?

Witness: Because all of the other test results so overwhelmingly pointed toward arsenic poisoning, and because test X isn't always reliable.

Comment: Neither one of these re-direct examinations should have been conducted unless the attorney had a good idea of what the witness's response would be. As a general rule, it is not advisable to ask a question if you don't know what the answer will be.

Re-Cross Examination After re-direct, additional questions may be asked by the cross examining attorney, but such questions are limited to matters raised on re-direct examination. Re-cross is not mandatory and should not be used simply to repeat points that have already been made.

Example:

Assume the cross-examination in the example above has occurred. A good re-cross-examination would be the following:

Attorney: Doctor, isn't it true that when you gave your deposition you had received all of the test results except the result of test X?

Witness: Yes, that's true.

Comment: The cross-examining attorney would then argue in the closing argument that the doctor testified in his deposition that he did not know the cause of death at that time and the only test result received after the deposition pointed away from arsenic poisoning.

III. Hostile Witness Rule- Mode and Order of Interrogation and Presentation

1. **Control by court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

2. **Scope of cross-examination.** Cross-examination shall be permitted on all relevant matters and matters affecting credibility.

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

4. **When is a witness hostile?** "Where a witness is an unwilling one, hostile to the party calling him, or stands in such a situation as to make him necessarily adverse to such party, his examination in chief may be allowed to assume something of the form of cross-examination, at least to the extent of allowing leading questions to be put to him." 44 OH Jurisprudence 3d 241, "hostile witness" §. 869
The issue is whether the witness's hostile attitude toward the party calling him/her is likely to make the witness reluctant to volunteer facts helpful to that party. Hostility may be demonstrated by the witness's demeanor in the courtroom, by other facts and circumstances, or by a combination thereof. Whether a witness is hostile is confided to the sound discretion of the presiding judge.

IV. Voir Dire

Voir Dire examination of a witness is not permitted

V. No offer of proof

No offers of proof may be requested or tendered

Article I. GENERAL PROVISIONS

RULE 101. Scope of Rules: Applicability; Privileges; Exceptions

Applicability. These rules govern proceedings in the Ohio Mock Trial Program and are the only basis for objections in the Ohio Mock Trial Program.

- No directed verdict or dismissal motion may be entertained.

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

Evidence which is not relevant is not admissible.

RULE 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay

(A) Exclusion mandatory. Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.

(B) Exclusion discretionary. Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence.

RULE 404. Character

Character evidence. Evidence of a person's character, other than his/her character for truthfulness, may not be introduced. Evidence about the character of a party for truthfulness or untruthfulness is only admissible if the party testifies.

Article VI. WITNESSES

RULE 601. General Rule of Competency

Every person is competent to be a witness.

RULE 602. Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that S/he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

RULE 607. Who May Impeach

(A) Who may impeach. The credibility of a witness may be attacked by any party except that the credibility of a witness may be attacked by the party calling the witness by means of a prior inconsistent statement only upon a showing of surprise and affirmative damage. This exception does not apply to statements admitted pursuant to Evid.R. 801(D)(1)(A), 801(D)(2), or 803.

RULE 608. Evidence of Character and Conduct of Witness

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

RULE 611. Mode and Order of Interrogation and Presentation

(A) Control by court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.

(B) Scope of cross-examination. For Ohio Mock Trial Rules, see Simplified Ohio Rules of Evidence (Section II).

(C) Leading questions. Leading questions should not be used on the direct examination of a witness. Leading questions are permitted on cross-examination. When a party calls a hostile witness interrogation may be by leading questions.

RULE 612. Writing Used to Refresh Memory

If a witness uses a writing to refresh his memory while testifying, an adverse party is entitled to have the writing produced at the hearing. S/he is also entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness.

RULE 616. Bias of Witness

In addition to other methods, a witness may be impeached by any of the following methods:

(A) Bias. Bias, prejudice, interest, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by extrinsic evidence.

(B) Sensory or mental defect. A defect of capacity, ability, or opportunity to observe, remember, or relate may be shown to impeach the witness either by examination of the witness or by extrinsic evidence.

(C) Specific contradiction. Facts contradicting a witness's testimony may be shown for the purpose of impeaching the witness's testimony.

Article VII. OPINIONS AND EXPERT TESTIMONY

RULE 701. Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, his/her 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 his testimony or the determination of a fact in issue.

RULE 702. Testimony by Experts

A witness may testify as an expert if: (1) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony; and (2) The witness's testimony is based on reliable scientific, technical, or other specialized information.

RULE 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by him/her or admitted in evidence at the hearing.

RULE 704. Opinion on Ultimate Issue

Testimony in the form of an opinion or inference otherwise admissible is not objectionable solely because it embraces an ultimate issue to be decided by the trier of fact.

RULE 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give his/her reasons therefore after disclosure of the underlying facts or data. The disclosure may be in response to a hypothetical question or otherwise.

Article VIII. HEARSAY

RULE 801. Definitions

The following definitions apply under this article:

(A) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by him 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 trial or hearing and is subject to cross-examination concerning the statement, and the statement is (a) inconsistent with his testimony, and was given under oath subject to cross-examination by the party against whom the statement is offered and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (b) consistent with his testimony and is offered to rebut an express or implied charge against him of recent fabrication or improper influence or motive, or (c) one of identification of a person soon after perceiving him, if the circumstances demonstrate the reliability of the prior identification.

(2) Admission by party-opponent. The statement is offered against a party and is (a) his own statement, in either his individual or a representative capacity, or (b) a statement of which he has manifested his adoption or belief in its truth, or (c) a statement by a person authorized by him to make a statement concerning the subject, or (d) a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship, or (e) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy upon independent proof of the conspiracy.

RULE 802. Hearsay Rule

Testimony which is hearsay is inadmissible.

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 unless circumstances indicate lack of trustworthiness.

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

(4) Statements for purposes of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, 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 testimony.

RULE 804. Hearsay Exceptions; Declarant Unavailable

(A) Definition of unavailability. "Unavailability as a witness" includes any of the following situations in which the declarant:

(4) is unable to be present or to testify at the hearing because of death or then-existing physical or mental illness or infirmity;

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

(2) Statement under belief of impending death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant, while believing that his or her death was imminent, concerning the cause or circumstances of what the declarant believed to be his or her impending death.

(3) Statement against interest. A statement that 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 the declarant believed it to be true. A statement tending to expose the declarant to criminal liability, whether offered to exculpate or inculpate the accused, is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

RULE 805. Hearsay Within Hearsay

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

Article IX. AUTHENTICATION AND IDENTIFICATION

RULE 901. Requirement of Authentication or Identification

(A) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

PART FOUR
EXAMPLES OF COMMON OBJECTIONS
AND TRIAL PROCEDURE

I. Procedure for Objections

- A. An attorney may object if s/he believes that the opposing attorney is attempting to introduce improper evidence or is violating the Simplified Rules of Evidence. The attorney wishing to object should stand up and object at the time of the claimed violation. The attorney should state the reason for the objection and, if possible, cite by rule number the specific rule of evidence that has been violated. (Note: Only the attorney who questions a witness may object to the questions posed to that witness by opposing counsel.) The attorney who asked the question may then make a statement about why the question is proper. The judge will then decide whether a question or answer must be discarded because it has violated a simplified rule of evidence (objection sustained), or whether to allow the question or answer to remain in the trial record (objection overruled). Objections should be made as soon as possible; however, an attorney is allowed to finish his/her question before an objection is made. Any objection that is not made at the time of the claimed violation is waived. When an objection has been sustained, the attorney who asked the question may attempt to rephrase that question. Judges may make rulings that seem wrong to you. Also, different judges may rule differently on the same objection. Always accept the judge's ruling graciously and courteously. Do not argue the point further after a ruling has been made.

II. Examples of Common Objections

The following are examples of common objections. This is not a complete list. Any objection properly based on the simplified Ohio rules of evidence is permitted:

1. ***Irrelevant evidence.*** "Objection. This testimony is irrelevant."
2. ***Irrelevant evidence that should be excluded.*** "Objection. This is unfairly prejudicial (or a waste of time) and should be excluded because..."
3. ***Leading question.*** "Objection. Counsel is leading the witness." (Remember, leading is only objectionable if done on direct or re-direct examination).
4. ***Narrative Answer.*** "Objection, this witness's answer is narrative" Commonly used on direct examination when a witness's answer has gone beyond the scope of the initial question.
5. ***Non-responsive Answer.*** "The witness is nonresponsive, your honor. I ask that this answer be stricken from the record." The witness's answer does not answer the question being asked. Commonly used by the cross examining attorney during cross examination.

Example:

Attorney: Isn't it true that you hit student B?

Witness: Student B hit me first. S/he was asking for it, acting like a jerk and humiliating me in front of all my friends.

Attorney: Your Honor, I move to strike the witness's answer as non-responsive and ask that s/he be instructed to answer the question asked.

(Another option is to impeach the witness with prior testimony if s/he testified in his his/her deposition that s/he hit student B.)

6. ***Beyond the scope of cross or re-direct.*** "Objection. Counsel is asking the witness about matters that were not raised during the cross or re-direct examination."
7. ***Improper character testimony.*** "Objection. This is testimony about character that does not relate to truthfulness or untruthfulness."
8. ***Improper opinion.*** "Objection. Counsel is asking the witness to give an expert opinion, and this

witness has not been qualified as an expert." *OR* "Objection. Counsel's question calls for an opinion which would not be helpful to understanding the witness's testimony (or which is not rationally based upon what the witness perceived.)"

9. ***Invention of facts:*** "Your Honor, we object on the basis that opposing counsel's question seeks evidence that is outside the record in this case. Witness X has never given testimony in this case concerning..." If the witness gives testimony on direct that is beyond the scope of materials, the cross-examining attorney should say "move to strike the testimony concerning...as beyond the scope of the case materials."

Example:

If witness X did not personally see arsenic in the medicine cabinet of the decedent's wife, he cannot testify that she had arsenic in her medicine cabinet.

10. ***Lack of personal knowledge:*** "Objection." The witness has no personal knowledge that would allow her to answer this question.
11. ***Speculation:*** "Objection. The witness is speculating/this question calls for speculation." A hybrid between lack of personal knowledge and improper opinion.
12. ***Hearsay:*** "Objection. Counsel's question calls for hearsay." If a hearsay response could not be anticipated from the question, or if a hearsay response is given before the attorney has a chance to object, the attorney should say, "I ask that the witness's answer be stricken from the record on the basis of hearsay."

Example:

Witness X testifies that "Mrs. Smith said that the decedent's wife had a bottle of arsenic in her medicine cabinet." This testimony is inadmissible if offered to prove that the decedent's wife had a bottle of arsenic in her medicine cabinet, since it is being offered to prove the truth of the matter asserted in the out-of-court statement by Mrs. Smith. If, however, the testimony is offered to prove that Mrs. Smith can speak English, then the testimony is not hearsay because it is not offered to prove the truth of the matter asserted in the out-of-court statement. However, the testimony is only admissible if Mrs. Smith's ability to speak English is relevant to the case.

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 that hearsay is considered untrustworthy because the speaker of the out-of-court statement has not been placed under oath and cannot be cross-examined concerning his/her credibility. In the previous example, Mrs. Smith cannot be cross-examined concerning her statement that the decedent's wife had a bottle of arsenic in her medicine cabinet, since witness X, and not Mrs. Smith has been called to give this testimony. However, witness X has been placed under oath and *can* be cross-examined about whether Mrs. Smith actually made this statement, thus demonstrating that she could speak English. When offered to prove that Mrs. Smith could speak English, witness X's testimony about her out-of-court statement is not hearsay.

Remember, there are responses to many of these objections that the examining attorney can make after the objection is raised and he or she is recognized by the judge to respond.

III. Other Trial Procedures

A. Opening Statement

An opening statement has been defined as "a concise statement of [the party's] claim [or defense] and a brief statement of [the party's] evidence to support it." Judge Richard M. Markus, *Trial Handbook for Ohio Lawyers* (Thomson-West, 2006 Edition), §7:1, p. 305. A party seeking relief

should indicate the nature of the relief sought. It may be useful to acknowledge the applicable burden, or burdens, of proof. An opening statement is not supposed to be argumentative, and should be used by attorneys to present their theories of the case. Legal authorities can be cited, to show what issue or issues are before the court for decision. It is appropriate to lay out what the attorney expects the evidence will show, but the wise attorney will be conservative in this regard.

The most important aspect of the opening statement is to frame the issues. The attorney wants to frame the issues so that there is a compelling narrative (the theory of the case) in his/hers client's favor into which all the favorable facts and all favorable legal authority neatly fit. A well-crafted opening statement tells a story that will dominate the trial that follows.

B. Closing Statements

Closing statements, "are permitted for the purpose of aiding the [finder of fact] in analyzing all the evidence and assisting it in determining the facts of the case." Markus, *op. cit.*, §35:1, at p. 1013. In a bench trial (to a judge, rather than to a jury), the closing statement is also the time to argue the law to the judge.

The attorney should point out to the court that his/her side has proven everything that it promised to prove, while pointing out that the other side failed to prove what it promised it would. It can now be shown how the evidence that was presented fits into the narrative (the theory of the case) that was introduced in opening statement, which, in turn, applying the law, compels a result in that side's favor. Remind the court what that favorable result is; i.e., the particular relief your client is seeking from the court.

On occasion, your evidence won't survive an objection, or the attorney's best witness will be forced to equivocate on an important point on cross-examination. When this occurs adjustments have to be made to the closing statement to fit the evidence actually presented in the trial.

The closing statements are the final opportunities to persuade the judge. In oral presentation, the statements having the most impact are the first statements, and the final statements. The attorney should try to make the first and last things said in closing argument the most vivid and persuasive, while reserving those points that have less emotional impact, but need to be said, for the middle of the statement.

C. Direct Examination - Form of Questions.

Witnesses should be asked neutral questions and may not be asked leading questions on direct examination. Neutral questions are open-ended questions that do not suggest the answer and that usually invite the witness to give a narrative response. A leading question is one that suggests to the witness the answer desired by the examining attorney and often suggests a "yes" or "no" answer.

Examples:

1. ***Proper direct examination questions:***
 - a. What did you see?
 - b. What happened next?
2. ***Leading questions (not permitted on direct):***
 - a. Isn't it true that you saw the defendant run into the alley?
 - b. After you saw the defendant run into the alley, you called the police, didn't you?

D. Cross Examination - Form of Questions

An attorney should usually, if not always, ask leading questions when cross-examining the opponent's witness. Open-ended questions tend to evoke a narrative answer, such as "why" or "explain," and should be avoided. (Leading questions are not permitted on direct examination because it is thought to be unfair for an attorney to suggest answers to a witness whose testimony is already considered to favor that attorney's side of the case. Leading questions are encouraged on cross-examination because witnesses called by the opposing side may be reluctant to admit facts that favor the cross-examining attorney's side of the case.) However, it is not a violation of this rule to ask a non-leading question on cross-examination.

Examples:

1. ***Good leading cross examination question:***

Isn't it true that it was almost completely dark outside when you say you saw the defendant run into the alley? (This is a good question where the witness's statement says it was "almost completely dark," but a potentially dangerous question when the statement says it was "getting pretty dark out.")

2. ***Poor cross examination question:***

How dark was it when you saw the defendant run into the alley? (the witness could answer, "It wasn't completely dark. I could see him.")

E. Opinion Testimony by Non-Experts

For mock trial purposes, most witnesses are non-experts. If a witness is a non-expert, the witness's testimony in the form of opinions is limited to opinions that are rationally based on what the witness saw or heard and that are helpful in explaining the witness's testimony. Non-experts (lay witnesses) are considered qualified to reach certain types of conclusions or opinions about matters which do not require experience or knowledge beyond that of the average lay person. Note, however, that the opinion must be *rationally* based on what the witness saw or heard *and* must be helpful in understanding the witness's testimony.

Examples:

1. Witness X, a non-expert, may testify that the defendant appeared under the influence of alcohol. However, it must be shown that this opinion is *rationally* based on witness X's observations by bringing out the facts underlying the opinion, e.g., the defendant was stumbling; his breath smelled of alcohol; his speech was slurred. If witness X thinks the defendant was under the influence because he had a strange look in his eye, then the opinion should not be permitted because it is not sufficiently rational and has potential for undue prejudice.

2. Witness X, a non-expert, may not testify that in his opinion the decedent died of arsenic poisoning, since this is not a matter that is within the general knowledge of lay persons. Only an expert, such as a forensic pathologist, is qualified to render such an opinion.

F. Opinion Testimony by Experts

Only persons who are shown to be experts at trial may give opinions on questions that require special knowledge beyond that of ordinary lay persons. An expert must be qualified by the attorney for the party for whom the expert is testifying. Before a witness can testify as an expert, and give opinions in the area of his/her expertise, a foundation must be laid for his/her testimony by introducing his/her qualifications into evidence. In a sense, every witness takes the stand as a non-expert, and the questioning attorney must then establish the witness's expertise to the court's

satisfaction for the witness to be able to testify as an expert. This is usually accomplished by asking the expert himself/herself about his/her background, training and experience.

Example:

Attorney: Doctor, please tell the jurors about your educational background.

Witness: I attended Harvard College and Harvard Medical School.

Attorney: Do you practice in any particular area of medicine?

Witness: I am board-certified forensic pathologist. I have been a forensic pathologist for 28 years.

It is up to the court to decide whether a witness is qualified to testify as an expert on a particular topic.

G. Refreshing Recollection (Rule 612)

If a witness is unable to recall information in his/her witness statement or contradicts the witness statement, the attorney calling the witness may use the witness statement to help the witness remember.

Example: Witness cannot recall what happened after the defendant ran into the alley or contradicts witness statement on this point:

1. Mr./ Mrs. Witness, do you recall giving a statement in this case?
2. Your Honor may I approach the witness? (Permission is granted.)
I'd like to show you a portion of the summary of your statement, and ask you to review the first two paragraphs on page three.
3. Having had an opportunity to review your statement, do you now recall what happened after the defendant ran into the alley?

H. Impeachment (Rule 607)

On cross-examination, the cross-examining attorney may impeach the witness. Impeachment is a cross-examination technique used to demonstrate that the witness should not be believed. Impeachment is accomplished by asking questions which demonstrate either (1) that the witness has now changed his/her story from statements or testimony given by the witness prior to the trial, or (2) that the witness's trial testimony should not be believed because the witness is a dishonest and untruthful person.

Impeachment differs from the refreshing recollection technique. Refreshing recollection is used during direct examination to steer a favorable, but forgetful, witness back into the beaten path. Impeachment is a cross-examination technique used to discredit a witness's testimony.

Examples:

1. ***Impeachment with prior inconsistent statement:***

Attorney: Mr. Jones, you testified on direct that you saw the two cars *before* they actually collided, correct?

Witness: Yes.

Attorney: You gave a deposition in this case a few months ago, correct?

Witness: Yes.

Attorney: Before you gave that deposition, you were sworn in by the bailiff to tell the truth, weren't you?

Witness: Yes.

Attorney: Mr. Jones, in your deposition, you testified that the first thing that drew your attention to the collision was when

Witness: you heard a loud crash, isn't that true?
I don't remember saying that.
Attorney: Your Honor, may I approach the witness?
(Permission is granted.) Mr. Jones, I'm handing you the
summary of your deposition and I'll ask you to read along
as I read the second full paragraph on page two, "I heard
a loud crash and I looked over and saw that the two cars
had just collided. This was the first time I actually saw the
two cars." Did I read that correctly?
Witness: Yes.
Attorney: Thank you Mr. Jones.

2. ***Impeachment with prior dishonest conduct:***

Attorney: Student X, isn't it true that last fall you were suspended
from school for three days for cheating on a test.
Witness: Yes.

I. Introduction of Physical Evidence (Rule 901)

Generally, physical evidence (objects) must be relevant and authentic (shown to be what they appear to be) in order to be admissible. Exhibits are generally presented to the court through witness testimony. Specifically, for mock trial purposes, all exhibits contained in the case materials are stipulated as admitted. Therefore, it is not necessary to demonstrate through a witness's testimony that an exhibit is authentic, or an accurate representation, nor is it necessary to move the court for the admission of exhibits. Exhibits may not be altered to give either side an unfair advantage.

Example:

Attorney: Your honor, we have marked this one-page document as
Plaintiff Exhibit 1 (or Defendant's Exhibit A). Let the record reflect
that I am showing Plaintiff Exhibit 1 (or Defendant's Exhibit A) to
opposing counsel. (Exhibit is shown to opposing counsel.) Your
Honor, may I approach the witness?
Judge: You may.
Attorney: Witness X, I'm showing you what has been marked as
Plaintiff Exhibit 1. Do you recognize that exhibit?
Witness: Yes.
Attorney: Could you explain to the Court what that is?
Witness: It's a map of the accident scene. (At this point, the attorney
may ask the witness any additional relevant questions about the
exhibit, and then give it to the judge.)