

# 2016-2017 Rules of Competition Rules of Evidence Forms

Delaware High School Mock Trial Competition

February 24-25, 2017

Leonard L. Williams Justice Center (formerly New Castle  
County Courthouse)



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**TABLE OF CONTENTS**

RULES .....3

    Rules of the Competition.....3

    Rules of Evidence.....18

FORMS .....35

    Team Dispute Form (Inside the Bar, Rule 6.1).....35

    Team Dispute Form (Outside the Bar, Rule 6.4) .....36

    Code of Ethical Conduct .....37

    Plaintiff Roster .....39

    Defense Roster .....40

    Criteria for Scoring a Trial Presentation .....41

    Explanation of the Performance Ratings Used on the Score Sheet.....43

    Sample Score Sheet.....44

## ***Rules of the Competition***

***(Revised November 2016)***

### **A. ADMINISTRATION**

#### **Rule 1.1. Rules**

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

Questions or interpretations of these rules are within the discretion of the Mock Trial Committee of the Delaware Law Related Education Center (hereinafter “Mock Trial Committee”), whose decision is final.

#### **Rule 1.2. Code of Conduct**

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

#### **Rule 1.3. Emergencies**

During a trial, the presiding judge shall have discretion to declare an emergency and adjourn the trial for a short period of time to address the emergency.

In the event of an emergency that would cause a team to be unable to continue a trial or to participate with less than six members, the team must notify the Mock Trial Committee as soon as is reasonably practical. If the Committee, or its designee(s), in its sole discretion, agrees that an emergency exists, the Committee, or its designee(s), shall declare an emergency and will decide whether the team will forfeit or may direct that the team take appropriate measures to continue any trial round with less than six members. A penalty may be assessed.

The Mock Trial Committee may, but does not have to, declare a forfeiture. If a forfeiture is declared, the forfeiting team will receive a loss and points totaling the average number of the ballots and points received by the losing teams in that round. The non-forfeiting team will receive a win and an average number of ballots and points received by the winning teams in that round.

Final determination of emergency, forfeiture, reduction of points, or advancement, will be made by the Committee.

#### **Rule 1.4. Student Timekeepers**

(a) Each team is responsible for providing one student as an official timekeeper equipped with two stopwatches. In trial, each team is to use a set of "Time Remaining" cards with the following designations to signal time: 20:00, 15:00, 10:00, 5:00, 4:00, 3:00, 2:00, 1:00, 0:40, 0:20, and "STOP". Modification of intervals is not permitted. The mock trial committee will provide "Time Remaining" cards and timekeeper instruction materials. Timekeepers must use the "Time Remaining" cards provided by the Host Committee and NO others.

(b) Each team's official timekeeper is required to attend the scheduled on-site timekeeper orientation if one is scheduled. If a team does not send an official timekeeper to the required orientation meeting, that team will defer to its opponents' official timekeepers in all rounds of the competition.

(c) If a team desires to assign more than one student to the timekeeper role, then all students who will be assigned to the timekeeper role must attend the timekeeper orientation if one is scheduled. The team's official student timekeeper will keep time for both sides during all competition rounds.

#### **Rule 1.5 No Practicing In Courtrooms of Competition Site**

**No team shall conduct practices in the courtrooms designated to host the state competition. Accordingly, no teams may practice in any courtroom of the Leonard L. Williams Justice Center (formerly New Castle County Courthouse) in the 2016-2017 competition season.** A team found to have violated this rule **shall** be punished, and the appropriate punishment shall be in the sole discretion of the Mock Trial Committee. Punishments may include, but are not limited to, disqualification of the coaching staff, an automatic reduction in points for one or more rounds of the competition, or disqualification of an entire team. For the avoidance of doubt, to the extent a team has permission to practice in another area of the New Castle County Courthouse, such as a conference room, this rule does not bar that team from practicing in that other area. Additionally, this rule does not bar the winner of the state competition from practicing in courtrooms at the New Castle County Courthouse, to the extent that team otherwise has permission, from the date of winning the state competition until leaving for the national competition.

### **B. THE PROBLEM**

#### **Rule 2.1. The Problem**

The problem will be a 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."

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

## **Rule 2.3. Unfair Extrapolation**

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

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.

The decision of the presiding judge regarding extrapolations or evidentiary matters is final.

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

## **Rule 2.4. Gender of Witnesses**

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

## **Rule 2.5. Voir Dire**

Voir dire examination of a witness is not permitted.

## C. TEAMS

### Rule 3.1. Team Eligibility

No institution may field more than one team except that a B team from the same institution can compete if there otherwise would be an odd number of teams competing. Approximately two months in advance of the competition, the Mock Trial Committee shall ask schools registered for the competition whether they have interest in fielding a B team, and if more than one school volunteers, the B team will be picked by random draw. Whether there is an odd number of teams in the field shall be officially decided on the first day of the competition. Although the Mock Trial Committee may notify the designated B team of the number of teams signed-up to participate in advance of the competition, that is merely a courtesy and **not** a guarantee that the B team shall compete. For the B team to compete, there must be an odd number of teams at the competition, which sometimes is not known until the day the competition begins.

### Rule 3.2. Team Composition

Teams consist of at least 6 and up to 14 official members assigned to attorney, witness and timekeeper roles representing the prosecution/plaintiff and defense/defendant sides. **Six** of the official members will participate in any given round as attorneys and witnesses. (See Rule 3.3 for further explanation referring to team participation.) Additionally, a person will be designated as an official timekeeper. The official timekeeper may be (but need not be) one official team members. The official timekeeper must be a student. The team's official student timekeeper will keep time for both sides during all competition rounds. At no time may any team for any reason substitute other persons for official team members. The Team Roster will become official at the time of onsite registration. A team can change its lineup before any round of the competition so long as the participants come from the official team members. **Please be advised that the National High School Mock Trial Competition only permits teams of 8 members. Accordingly, the state champion may have to cut official team members if it had more than 8 members during the state competition.**

### Rule 3.3. Team Presentation

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

### Rule 3.4. Team Duties

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

1. Opening Statements
2. Direct Examination of Witness #1

3. Direct Examination of Witness #2
4. Direct Examination of Witness #3
5. Cross Examination of Witness #1
6. Cross Examination of Witness #2
7. Cross Examination of Witness #3
8. Closing Argument (including Rebuttal) [See Rule 4.5]

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

The attorney who examines a particular witness on direct examination is the only person who may make the objections to the opposing attorney's questions of that witness' cross-examination, and the attorney who cross-examines a witness will be the only one permitted to make objections during the direct examination of that witness. An attorney may not do the opening and the closing in the same trial.

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 Form**

Copies of the Team Roster Form must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams must be identified by the code assigned at registration. No information identifying team origin should appear on the form. Before beginning a trial, the teams must exchange copies of the Team Roster Form. The Form should identify the gender of each witness so that references to such parties will be made in the proper gender. Copies of the Team Roster Form should also be made available to the judging panel and presiding judge before each round. Teams shall not knowingly disclose their place of origin to any member of the judging panel or to the presiding judge.

## **D. THE TRIAL**

### **Rule 4.1. Courtroom Setting**

The Plaintiff/Prosecution team shall be seated closest to the jury box. No team shall rearrange the courtroom without prior permission of the judge.

### **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 will be used before questioning begins:

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

The above oath will be conducted by (a) the presiding judge or (b) a bailiff. The oath of all six witnesses will occur simultaneously at the beginning of each mock trial.

#### **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 (5 minutes per side)

The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; the Prosecution/Plaintiff may reserve a portion of its closing time for a rebuttal. The Prosecution/Plaintiff's rebuttal is limited to the scope of the Defense's closing argument.

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

#### **Rule 4.6. Timekeeping**

(a) Each team is required to provide one student who will serve as the official timekeeper for that team. This timekeeper must meet the requirements of Rule 1.4. Timekeepers are responsible for fairly and accurately keeping and reporting the time during the trial presentation and during any disputes under Rule 6.2. Timekeepers are not to communicate with their respective teams during the course of the trial presentation, recesses, or during any dispute procedure, except to display the time remaining cards and indicate (as directed by the presiding judge) how much time is remaining during a particular part of the trial.

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



(c) Timekeepers should display the applicable “Time Remaining” cards simultaneously. At the end of each task during the trial presentation (i.e. at the end of each opening, at the end each witness examination, at the end of each cross examination and at the end of each closing argument) if there is more than a 15 second discrepancy between the teams’ timekeepers, the timekeepers must notify the presiding judge of the discrepancy. The presiding judge will then rule on the discrepancy, the timekeepers will synchronize their stopwatches accordingly and the trial will continue. Any discrepancies between timekeepers less than 15 seconds will not be considered. No time disputes will be entertained after the trial concludes. The decisions of the presiding judge regarding the resolution of time disputes are final.

#### **Rule 4.7. Time Extensions and Scoring**

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

#### **Rule 4.8. Motions Prohibited and Recesses**

A motion for a recess may be used only in the event of an emergency, *i.e.*, health emergency. To the greatest extent possible, team members are to remain in place. Should a recess be called, teams are not to communicate with any observers, coaches, or instructors regarding the trial.

A short recess of 2 minutes at the close of all of the evidence but before closings will be granted. Team members should remain in place and there should be no communication outside the bar.

#### **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**

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

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

#### **Rule 4.12. Trial Communication**

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

Coaches, teachers, alternates and observers must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar and communicate with each other.

#### **Rule 4.13. Viewing a Trial**

Prior to the final round, team members, alternates, attorney/coaches, teacher-sponsors, and any other persons directly associated with a mock trial team, except for those authorized by the Mock Trial Committee, are not allowed to view other teams' performances in the competition, so long as their team remains in the competition. No person shall display anything that identifies their place of origin while in the court room.

#### **Rule 4.14. Videotaping/Photography**

Any team has the option to refuse participation in videotaping, tape recording, and still photography by opposing teams.

Media coverage will be allowed.

#### **Rule 4.15. Jury Trial**

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

#### **Rule 4.16. Standing During Trial**

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

#### **Rule 4.17. Objections During Opening Statement/Closing Statement**

No objections may be raised during opening statements or during closing arguments.

If a team believes an objection would have been proper during the opposing team's opening statement or closing argument, one of its attorneys may, following the opening statement or closing argument, stand to be recognized by the judge and may say, "If I had been permitted to object during opening statement/closing arguments, I would have objected to the opposing team's statement that \_\_\_\_\_." The presiding judge will not rule on this "objection."

Presiding and scoring judges will weigh the "objection" individually. No rebuttal by opposing team will be heard.

#### **Rule 4.18. Objections**

**1. Argumentative Questions:** An attorney shall not ask argumentative questions.

**2. Lack of Proper Predicate/Foundation:** Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.

**3. Assuming Facts Not in Evidence:** Attorneys may not ask a question that assumes unproved facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by evidence (sometimes called a "hypothetical question").

**4. Questions Calling for Narrative or General Answer:** Questions must be stated so as to call for a specific answer. (Example of improper question: "Tell us what you know about this case.")

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

**6. Repetition:** Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

Teams are not precluded from raising additional objections which are available under the *Delaware High School Mock Trial 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. "Your honor, may I approach the witness with what has been marked as Exhibit No. \_\_\_?"
3. Show the exhibit to opposing counsel.
4. Ask the witness a series of questions that are offered for proof of the admissibility of the exhibit. These questions lay the foundation or predicate for admissibility, including questions of the relevance and materiality of the exhibit.
5. Offer the exhibit into evidence. "Your Honor we offer Exhibit No. \_\_\_ into evidence."

6. Court: Is there an objection?

7. Opposing Counsel: “No, Your Honor” or “Yes, Your Honor.” If the response is “yes,” the objection will be stated for the record. Court: “Is there any response to the objection?”

8. Court: “Exhibit No. \_\_\_\_ (is/is not) admitted. If admitted, questions on content may be asked.

#### **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. Team members involved in that trial may consult with each other at counsel table verbally or through the use of notes.

#### **Rule 4.22. Redirect/Recross**

Redirect and Recross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Delaware 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 4.24. The Critique**

The judging panel is allowed 10 minutes for debriefing. Presiding judges are to limit critique sessions to a combined total of ten minutes. Judges shall not make a ruling on the legal merits of the trial. Judges may not inform the students of score sheet results.

#### **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.

#### **Rule 5.2 Composition of Judging Panels**

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

1. One presiding judge with the two scoring judges (all three of whom complete score sheets);
2. One presiding judge and two scoring judges (scoring judges only complete score sheets);
3. One presiding judge and two scoring judges (scoring judges only complete score sheets and presiding judge completes a form which selects only the winner and does not assign point totals for either team);
4. The scoring judges may be persons with substantial mock trial coaching or scoring experience or attorneys.

Each scoring panel shall include at least one attorney. The presiding judge shall be an attorney. At the discretion of the mock trial committee, the rounds may have a larger panel. All presiding and scoring judges receive the mock trial manual, a memorandum outlining the case, orientation materials, and a briefing.

In the event of an emergency (i.e., sudden illness, etc.), if a judging panel member must leave the courtroom, the presiding judge will call for a brief recess, assess whether the judging panel member will be able to return in a reasonably short period of time, and then resume the proceedings upon the panel member's return to the courtroom. If the panel member is unable to return to the courtroom, the dispute resolution committee must be informed. Once the panel composition is adjusted by this committee to best meet the requirements of the rules and the round should continue. During any recess under this rule, the teams, whenever possible, should remain seated in their appropriate positions within the courtroom until the round resumes.

### **Rule 5.3. Score Sheets/Ballots**

The term "ballot" will refer to the decision made by a scoring judge as to which team made the best presentation in the round. The term "score sheet" is used in reference to the form on which speaker and team points are recorded. Score sheets are to be completed individually by the scoring judges. Scoring judges are not bound by the rulings of the presiding judge. The team that earns the highest points on an individual judge's score sheet is the winner of that ballot. The team that receives the majority of the ballots wins the round. The ballot votes determine the win/loss record of the team for power-matching and ranking purposes. While the judging panel may deliberate on any special awards (i.e., Outstanding Attorney/Witness) the judging panel should not deliberate on individual scores.

### **Rule 5.4 Completion of Score Sheets**

Each scoring judge shall record a number of points (1-10) for each presentation of the trial. If there is a team presentation score on the ballot a number between 1 and 10 needs to be placed in this box. At the end of the trial, each scoring judge shall total the sum of each team's individual points, place this sum I in the **Total Points** box, and enter the team ("P" for

prosecution/plaintiff of “D” for defense/defendant) with the higher total number of points in the tie-breaker box. NO TIE IS ALLOWED IN THE **TOTAL POINTS** BOXES.

In the event of a mathematical error in tabulation by the scoring judges which, when corrected, results in a tie in the **Total Points** boxes, the tie-breaker box shall determine award of the ballot.

### **Rule 5.5. Team Advancement**

All teams will compete in four preliminary rounds. Following the completion of the four preliminary rounds, teams will be ranked based on the following criteria in the order listed:

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

The top two teams following the preliminary rounds will advance to the Championship Round.

### **Rule 5.6. Power Matching/Seeding**

A random method of selection will determine opponents in the first round. In the second round, teams will present the opposite side of the case than that which they presented in the first round. With this side constraint, a power-match system will determine opponents for the second round. For all other rounds, a power match system shall also be used. The two teams emerging with the strongest record as determined by Rule 5.5 from the preliminary rounds will advance to the final round. The championship round winner will be determined by ballots from the championship round only.

Power matching will provide that:

1. Pairings for the first round will be at random;
2. Except in the case of an unforeseen emergency, in the second round, teams shall switch sides;
3. All teams are guaranteed to present each side of the case at least once;

4. For Rounds 3 and 4, brackets will be determined by win/loss record. Sorting within brackets will be determined in the following order: (1) win/loss record; (2) ballots; (3) strength of opponent (for pairings for rounds 3 and 4); (4) speaker points; then (5) point spread. The team with the highest number of ballots in the bracket will be matched with the team with the lowest number of ballots in the bracket; the next highest with the next lowest, and so on until all teams are paired;
5. For Round 2 only, because of the requirement that the teams present the opposite side of the case than that which they presented in Round 1, teams will be sorted by their required side of the case before the power matching described in item 4 is applied; by way of example the best one win/zero loss prosecution team shall play the worst one win/zero loss defense team;
6. If there is an odd number of teams in a bracket, the team at the top of that bracket will be matched with the top team from the next lower bracket;
7. Teams will not meet the same opponent twice prior to the Round 4;
8. An A and B team from the same institution will not meet prior to the Championship Round. Whenever possible when a team meets both the A and B team from the same institution the alignment of the second trial will be set up so the team plays the opposite side in the second trial.
9. To the greatest extent possible, teams will alternate side presentation in subsequent rounds. In the fourth round, in trials that will determine who will participate in the Championship Round (which is normally two or three trials), the Mock Trial Committee shall whenever possible preserve bracket integrity even if it means one or more teams in those rounds must present a side of the case for a third time. **Teams are not guaranteed that they will present both sides twice.**

#### **Rule 5.7. Selection of Sides For Championship Round**

In determining which team will represent which side in the Championship Round, the following procedure shall be used:

1. The team with the letter/numerical code which comes first alphabetically (deleted) will be considered the “Designated Team.”
2. The coin will be tossed by a designee of the host state coordinator.
3. If the coin comes up heads, the Designated Team shall represent the plaintiff/prosecution in the Championship Round. If the coin comes up tails, the Designated Team shall represent the defendant.

#### **Rule 5.8. Odd Number of Teams Participating in Championship**

In the event of a circumstance resulting in an odd number of competing teams, the following procedure will apply:

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

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

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

## **F. DISPUTE RESOLUTION**

### **Rule 6.1. Reporting a Rules Violation/Inside the Bar**

Disputes which 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**

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



student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider her/his ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

### **Rule 6.3. Effect of Violation on Score**

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

### **Rule 6.4. Reporting of Rules Violation/Outside the Bar**

Disputes which occur outside the bar only during a trial round may be brought by teacher or attorney-coaches exclusively. Such disputes must be made promptly to a trial coordinator or a member of the Mock Trial Committee, who will ask the complaining party to complete a dispute form. The form will be taken to the tournament's communication's center, whereupon a dispute resolution panel will (a) notify all pertinent parties; (b) allow time for a response, if appropriate; (c) conduct a hearing; and (d) rule on the charge. The dispute resolution panel may notify the judging panel of the affected courtroom of the ruling on the charge or may assess an appropriate penalty.

The dispute resolution panel will be designated by the Mock Trial Committee.

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**DELAWARE HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP**

**RULES OF EVIDENCE**

**(ADOPTED OCTOBER 2012)**

**TABLE OF CONTENTS**

<b>Article I.</b>	<b>General Provisions</b>	
Rule 101	Scope.....	20
Rule 102	Purpose and Construction .....	20
<b>ARTICLE II.</b>	<b>JUDICIAL NOTICE .....</b>	<b>21</b>
Rule 201	Judicial Notice of Adjudicative Facts.....	21
<b>Article III.</b>	<b>Presumptions in Civil Actions and Proceedings</b>	
	<i>(Not Applicable)</i> .....	21
<b>Article IV.</b>	<b>Relevancy and its Limits.....</b>	<b>21</b>
Rule 401	Definition of “Relevant Evidence” .....	21
Rule 402	Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible .....	21
Rule 403	Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.....	21
Rule 404	Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes .....	22
Rule 405	Methods of Proving Character .....	22
Rule 406	Habit; Routine Practice .....	23
Rule 407	Subsequent Remedial Measures .....	23
Rule 408	Compromise and Offers to Compromise .....	23
Rule 409	Payment of Medical or Similar Expenses.....	23
Rule 410	Inadmissibility of Pleas, Plea Discussions and Related Statements.....	23
Rule 411	Liability Insurance (civil case only) .....	24
<b>Article V.</b>	<b>Privileges</b>	
Rule 501	General Rule .....	24
<b>Article VI.</b>	<b>Witnesses</b>	
Rule 601	General Rule of Competency.....	24
Rule 602	Lack of Personal Knowledge .....	25

Rule 607	Who May Impeach.....	25
Rule 608	Evidence of Character and Conduct of Witness .....	25
Rule 609	Impeachment by Evidence of Conviction of Crime (this rule applies only to witnesses with prior convictions.) .....	25
Rule 610	Religious Beliefs or Opinions.....	26
Rule 611	Mode and Order of Interrogation and Presentation .....	26
Rule 612	Writing Used to Refresh Memory.....	27
Rule 613	Prior Statements of Witnesses .....	27
<b>Article VII.</b>	<b>Opinions and Expert Testimony</b>	
Rule 701	Opinion Testimony by Lay Witness .....	28
Rule 702	Testimony by Experts .....	28
Rule 703	Bases of Opinion Testimony by Experts .....	28
Rule 704	Opinion on Ultimate Issue .....	28
Rule 705	Disclosure of Facts or Data Underlying Expert Opinion.....	28
<b>Article VIII.</b>	<b>Hearsay</b>	
Rule 801	Definitions.....	29
Rule 802	Hearsay Rule.....	30
Rule 803	Hearsay Exceptions, Availability of Declarant Immaterial .....	30
Rule 804	Hearsay Exceptions, Declarant Unavailable.....	32
Rule 805	Hearsay within Hearsay .....	34
<b>Article IX.</b>	<b>Authentication and Identification</b>	
(Not Applicable).....		34
<b>Article X.</b>	<b>Contents of Writings, Recordings, and Photographs (Not Applicable) .....</b>	<b>34</b>
<b>Article XI.</b>	<b>Other</b>	
Rule 1103	Title.....	34

**DELAWARE HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP**  
**RULES OF EVIDENCE**  
(Adopted October 2012)

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 judge will probably allow the evidence. The burden is on the mock trial team to know the National 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 Rules of Evidence govern the Delaware High School Mock Trial Championship.

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**ARTICLE I. GENERAL PROVISIONS**

**Rule 101. Scope**

These National High School Mock Trial Rules of Evidence govern the trial proceedings of the National High School Mock Trial Championship.

**Rule 102. Purpose and Construction**

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

## **ARTICLE II. JUDICIAL NOTICE**

### **Rule 201. Judicial Notice of Adjudicative Facts**

- (a) This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
- (b) The court may judicially notice a fact that is not subject to reasonable dispute because it is a matter of mathematical or scientific certainty. For example, the court could take judicial notice that  $10 \times 10 = 100$  or that there are 5280 feet in a mile.
- (c) The court must take judicial notice if a party requests it and the court is supplied with the necessary information.
- (d) The court may take judicial notice at any stage of the proceeding.
- (e) A party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed.
- (f) In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

## **ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS -- Not Applicable**

## **ARTICLE IV. RELEVANCY AND ITS LIMITS**

### **Rule 401. Test for Relevant Evidence**

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

### **Rule 402. General Admissibility of Relevant Evidence**

Relevant evidence is admissible unless these rules provide otherwise. Irrelevant evidence is not admissible.

### **Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons**

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

**Rule 404. Character Evidence; Crimes or Other Acts.**

(a) Character Evidence.

(1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case:

(A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

(B) a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:

(i) offer evidence to rebut it; and

(ii) offer evidence of the defendant's same trait; and

(C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

(3) Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

(b) Crimes, Wrongs, or Other Acts.

(1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

**Rule 405. Methods of Proving Character.**

(a) By Reputation or Opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.

(b) By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

#### **Rule 406. Habit, Routine Practice**

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

#### **Rule 407. Subsequent Remedial Measures**

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or — if disputed — proving ownership, control, or the feasibility of precautionary measures.

#### **Rule 408. Compromise Offers and Negotiations**

(a) Prohibited Uses. Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

(1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim — except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

(b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

#### **Rule 409. Offers to Pay Medical And/Or Similar Expenses**

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

#### **Rule 410. Pleas, Plea Discussions, and Related Statements**

(a) Prohibited Uses. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

- (1) a guilty plea that was later withdrawn;
  - (2) a nolo contendere plea;
  - (3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
  - (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.
- (b) Exceptions. The court may admit a statement described in Rule 410(a)(3) or (4):
- (1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or
  - (2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

**Rule 411. Liability Insurance (*civil case only*)**

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or proving agency, ownership, or control.

**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. Need for Personal Knowledge.**

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703. (*See Rule 2.2*)

**Rule 607. Who May Impeach A Witness**

Any party, including the party that called the witness, may attack the witness's credibility.

**Rule 608. A Witness's Character For Truthfulness or Untruthfulness**

(a) Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

(b) Specific Instances of Conduct. Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

(1) the witness; or

(2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

**Rule 609. Impeachment by Evidence of a Criminal Conviction**

(a) In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:

(A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and

(B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and

(2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness’s admitting — a dishonest act or false statement.

(b) **Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness’s conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.

(c) **Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) **Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:

(1) it is offered in a criminal case;

(2) the adjudication was of a witness other than the defendant;

(3) an adult’s conviction for that offense would be admissible to attack the adult’s credibility; and

(4) admitting the evidence is necessary to fairly determine guilt or innocence.

(e) **Pendency of an Appeal.** A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

### **Rule 610. Religious Beliefs or Opinions**

Evidence of a witness’s religious beliefs or opinions is not admissible to attack or support the witness’s credibility.

### **Rule 611. Mode and Order of Interrogation and Presentation**

(a) **Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

(1) make those procedures effective for determining the truth;

(2) avoid wasting time; and

(3) protect witnesses from harassment or undue embarrassment.

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

(c) **Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

(1) on cross-examination; and

(2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

(d) **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 examination. Likewise, additional questions may be asked by the cross examining attorney or re-cross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.

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

### **Rule 612. Writing Used to Refresh a Witness's Memory**

If a written statement is used to refresh the memory of a witness either while testifying 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. Witness's Prior Statement**

(a) **Showing or Disclosing the Statement During Examination.** When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

(b) **Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

## **ARTICLE VII. OPINIONS AND EXPERT TESTIMONY**

### **Rule 701. Opinion Testimony by Lay Witness**

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

### **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 thereto in the form of an opinion or otherwise.

### **Rule 703. Bases of an Expert's Opinion Testimony**

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

### **Rule 704. Opinion on Ultimate Issue**

(a) **In General — Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue.

(b) **Exception.** In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

### **Rule 705. Disclosing the Facts or Data Underlying An Expert's Opinion**

Unless the court orders otherwise, an expert may state an opinion — and give the reasons for it — without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

## ARTICLE VIII. HEARSAY

### Rule 801. Definitions

The following definitions apply under this article:

(a) Statement. “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) Declarant. “Declarant” means the person who made the statement.

(c) Hearsay. “Hearsay” means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:

(1) A Declarant-Witness’s Prior Statement. The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant’s testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(B) is consistent with the declarant’s testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(C) identifies a person as someone the declarant perceived earlier.

(2) An Opposing Party’s Statement. The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party’s agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party’s coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

### **Rule 802. Hearsay Rule**

Hearsay is not admissible except as provided by these Rules.

### **Rule 803. Exceptions to the Rule Against Hearsay – Regardless of Whether the Declarant is Available as a Witness**

The following are not excluded by the hearsay rule, regardless of whether ~~even though~~ the declarant is available as a witness:

(1) **Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) **Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(3) **Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) **Statement Made for Medical Diagnosis or Treatment.** A statement that:

(A) is made for — and is reasonably pertinent to — medical diagnosis or treatment;  
and

(B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

(5) **Recorded Recollection.** A record that:

(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) **Records of a Regularly Conducted Activity.** A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by — or from information transmitted by — someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

(7) **Absence of a Record of a Regularly Conducted Activity.** Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and

(C) neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

(8) **Public Records.** A record or statement of a public office if:

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) neither the source of information nor other circumstances indicate a lack of trustworthiness.

(10) **Absence of a Public Record.** Testimony that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

(A) the record or statement does not exist; or

(B) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

(16) **Statements in Ancient Documents.** A statement in a document that is at least 20 years old and whose authenticity is established.

(18) **Statements in Learned Treatises, Periodicals, or Pamphlets.** A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(21) **Reputation Concerning Character.** A reputation among a person's associates or in the community concerning the person's character.

(22) **Judgment of a Previous Conviction.** Evidence of a final judgment of conviction if:

(A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(B) the conviction was for a crime punishable by death or by imprisonment for more than a year;

(C) the evidence is admitted to prove any fact essential to the judgment; and

(D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

#### **Rule 804. Hearsay Exceptions; Declarant Unavailable**

(a) **Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

(2) refuses to testify about the subject matter despite a court order to do so;

(3) testifies to not remembering the subject matter;



(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

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

(1) Former Testimony. Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

(2) Statement Under the Belief of Imminent Death. In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) Statement Against Interest. A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

(4) Statement of Personal or Family History. A statement about:

(A) the declarant’s own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person’s family that the declarant’s information is likely to be accurate.

(5) Not Applicable

(6) Statement Offered Against a Party That Wrongfully Caused the Declarant’s Unavailability. A statement offered against a party that wrongfully caused — or acquiesced in wrongfully causing — the declarant’s unavailability as a witness, and did so intending that result.

**Rule 805. Hearsay within Hearsay**

Hearsay included within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

**ARTICLE IX. AUTHENTICATION AND IDENTIFICATION – Not Applicable**

**ARTICLE X. CONTENTS OF WRITING, RECORDINGS AND PHOTOGRAPHS – Not Applicable**

**ARTICLE XI. OTHER**

**Rule 1103. Title**

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

**DELAWARE  
MOCK TRIAL  
CHAMPIONSHIP**

**TEAM DISPUTE FORM**  
**Inside the Bar [Rule 6.1]**  
*(please print.)*

Date: \_\_\_\_\_

Round *(circle one)*:

1      2      3      4

**TEAM LODGING DISPUTE:** \_\_\_\_\_ *(Enter Team Code)*

Grounds for Dispute: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

INITIALS OF TEAM SPOKESPERSON: \_\_\_\_\_

HEARING DECISION OF PRESIDING JUDGE *(circle one)*:      **Grant**      **Deny**

Reason(s) for Denying Hearing or Response of Opposing Team: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

INITIALS OF OPPOSING TEAM'S SPOKESPERSON: \_\_\_\_\_

Judge's Notes from Hearing:

\_\_\_\_\_  
\_\_\_\_\_

DECISION OF JUDGE REGARDING DISPUTE *(circle one)*:      **Refer to Panel**

**Not Refer to Panel**

Comments: \_\_\_\_\_

***This form must be returned to the trial coordinator along with the scoresheets of all the evaluators.***

\_\_\_\_\_  
*Signature of Presiding Judge*

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**DELAWARE  
MOCK TRIAL  
CHAMPIONSHIP**

**TEAM DISPUTE FORM**  
**Outside the Bar [Rule 6.4]**  
*(Please print.)*

Date: \_\_\_\_\_ Time Submitted: \_\_\_\_\_

**PERSON LODGING DISPUTE:** \_\_\_\_\_

**AFFILIATED WITH:** \_\_\_\_\_ *(Enter Team Code)*

Grounds for Dispute: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

INITIALS OF TRIAL COORDINATOR: \_\_\_\_\_ TIME DISPUTE PRESENTED TO  
COORD: \_\_\_\_\_

HEARING DECISION OF DISPUTE PANEL *(circle one)*: **Grant** **Deny**

Reason(s) for Denying Hearing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Notes from Hearing: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Decision/Action of Dispute Panel: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
*Signature of Trial Coordinator*

\_\_\_\_\_  
*Date/time of Decision*

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## Code of Ethical Conduct

*The following Code of Conduct is to be read and signed by all team participants, faculty coaches and attorney advisors. The signed copies are to be presented to the Executive Director of the Delaware Law Related Education Center, along with the team roster prior to the beginning of the Competition.*

The purpose of the Delaware High School Mock Trial Competition is to stimulate and encourage a deeper understanding and appreciation of the legal system. The purpose is accomplished by providing students the opportunity to participate actively in the learning process. The education of students is the primary goal of the Mock Trial program, and healthy competition helps to achieve this goal. Other important objectives include: improving proficiency in speaking, listening, reading, and reasoning skill; promoting effective communication and cooperation between the educational and legal communities; providing an opportunity to compete in an academic setting; and promoting cooperation among young people of diverse interests and abilities.

As a means of diligent application of the Delaware Mock Trial Competition Rules, the Delaware Law Related Education Center encourages all participants to follow the Code of Ethical Conduct:

1. Team members promise to compete with the highest standards of deportment, showing respect for their fellow team members, opponents, judges, evaluators, Attorney coaches, teacher coaches and Mock Trial personnel. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Members will avoid all tactics they know to be wrong or in violation of the Rules, including the Invention of Facts. Members will not willfully violate the Rules of the competition in spirit or practice.
2. The student presentations shall be the work product of the students themselves. It is important that the opening and closing arguments, direct and cross examinations, testimony and all other presentations be the students' work, rather than the narration of words prepared by an adult.
3. Teacher coaches agree to focus attention on the educational value of the Mock Trial Tournament. They shall discourage the willful violation of the Rules. Teachers will instruct students as to proper procedures and decorum and will assist their students in understanding and abiding by the Competition Rules and this Code of Ethical Conduct.
4. Attorney Coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the competition Rules and this Code of Conduct. Attorney coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.

5. Attorney coaches and other legal advisors can help the team as constructive and critical teachers by listening, suggesting and demonstrating to a team. An attorney coach or legal advisor should:
  - Discuss the legal issues raised in the case;
  - Answer questions concerning general trial procedure;
  - Explain the reasons for and the sequence of the events and the procedures found in the trial;
  - Listen to the students' approaches to the case; and
  - Discuss general strategies and raise key questions regarding the students' enactment of their roles in the trial.
6. All participants (including observers) are bound by all sections of this Code and agree to abide by its provisions. Teams are responsible for insuring that all observers are aware of the Code.

**Signatures:**

The Delaware High School Mock Trial Competition  
Plaintiff Roster

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Team Code

Attorneys	Roles
(1) _____	_____
(2) _____	_____
(3) _____	_____

Witnesses	Roles
(1) _____	_____
(2) _____	_____
(3) _____	_____

Alternates

(1) \_\_\_\_\_  
(2) \_\_\_\_\_

Note: Bring 40 copies of this form to the competition.

The Delaware High School Mock Trial Competition  
Defense Roster

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Team Code

Attorneys	Roles
(1) _____	_____
(2) _____	_____
(3) _____	_____

Witnesses	Roles
(1) _____	_____
(2) _____	_____
(3) _____	_____

Alternates

(1) \_\_\_\_\_  
(2) \_\_\_\_\_

Note: Bring 40 copies of this form to the competition.



**DELAWARE HIGH SCHOOL  
MOCK TRIAL COMPETITION  
CRITERIA FOR SCORING A TRIAL PRESENTATION**

*The following criteria should be considered during the course of a team's trial presentation. Consider "5" as average. This list is designed to serve as a guideline. All points accessed in a round are subjective.*

**Opening Statement**

- Provided a case overview
- The theme/theory of the case was identified
- Mentioned the key witnesses
- Provided a clear and concise description of their team's side of the case
- Stated the relief requested
- Discussed the burden of proof
- Presentation was non argumentative
- Points may be deducted for use of notes, at the Scoring Judge's discretion

**Direct Examinations**

- Properly phrased questions
- Used proper courtroom procedure
- Handled objections appropriately and effectively and did not overuse objections
- Did not ask questions that called for an unfair extrapolation from the witness
- Demonstrated an understanding of the Rules of Evidence
- Handled physical evidence appropriately and effectively (Rule 4.20)

**Cross Examinations**

- Properly phrased questions
- Effective questioning
- Properly impeached witnesses
- Handled objections appropriately and effectively
- Did not overuse objections
- Used various techniques, as necessary, to handle a non-responsive witness
- Demonstrated an understanding of the Rules of Evidence
- Handled physical evidence appropriately and effectively (Rule 4.20)

**Witness Performance**

- Did not use notes (as is required)
- Credible portrayal of character
- Showed understanding of the facts
- Sounded spontaneous, not memorized
- Demonstrated appropriate courtroom decorum
- Avoided unnecessarily long and/or non-responsive answers on cross-examination
- Use of unfair extrapolations, for which points should be deducted

**Closing Statement**

- Theme/theory continued in closing argument
- Summarized the evidence
- Emphasized the supporting points of their own case and damaged the opponent's case
- Concentrated on the important, not the trivial
- Applied the applicable law
- Discussed burden of proof
- Responded to judge's questions with poise
- Overall, the closing statement was persuasive
- There should be only a minimal reliance on notes during the closing statement
- Points should be deducted if closing argument exceeds time limit

**Tiebreaker**

The team with the higher number of points shall win the ballot. We do not want ties! Place a "P" or "D" in the Tiebreaker Box on the ballot to indicate which side has the higher number of points; the team winning the majority of the ballots shall win the round.

## EXPLANATION OF THE PERFORMANCE RATINGS USED ON THE SCORESHEET

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

Scoring Judges may recognize outstanding individual presentations by selecting one OUTSTANDING ADVOCATE and one OUTSTANDING WITNESS per round. Each Scoring Judge determines individually which student will receive his/her vote; however, the entire judging panel may confer on this matter.

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

<u>POINTS</u>	<u>PERFORMANCE</u>	<u>CRITERIA FOR EVALUATING STUDENT PERFORMANCE</u>
1 – 2	Not Effective	Unsure of self, illogical, uninformed, not prepared, speaks incoherently, and ineffective in communication
3 – 4	Fair	Minimally informed and prepared. Performance is passable, but lacks depth in terms of knowledge of task and materials; communications lack clarity and conviction
5 – 6	Good	Good, solid, but less than spectacular performance; can perform outside of written notes, but with less confidence than when using written notes; logic and organization are adequate, but does not convey mastery of same; communications are clear and understandable, but could be stronger in fluency and persuasiveness
7 – 8	Excellent	Fluent, persuasive, clear and understandable; well organized materials and thoughts; exhibits mastery of the case and materials; thinks quickly and spontaneously; does not read from notes
9-10	Outstanding	Exceptional presentation; flawless; superior in qualities listed for performance meriting 7-8 points

The team with the higher number of points shall win the ballot (and shall be entered in the Tiebreaker Box on the ballot); the team winning the majority of the ballots shall win the round.

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



**2008 NATIONAL HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP  
SCORE SHEET**

P = Prosecution/Plaintiff: \_\_\_\_\_ D = Defense: \_\_\_\_\_  
(Team Code) (Team Code)

DATE: \_\_\_\_\_ ROUND: (CIRCLE ONE) 1 2 3 4 Final

Using a scale of 1 to 10, rate the P and D in the categories below.  
DO NOT use fractional points nor award zero points. NO TIES ALLOWED in TOTAL POINTS.

Not Effective 1-2	Fair 3-4	Good 5-6	Excellent 7-8	Outstanding 9-10
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SCORESHEET/BALLOT		P	D
<b>OPENING STATEMENT</b>			
Prosecution/Plaintiff	Direct Examination		
First Witness:	Cross-Examination		
	Witness Presentation		
Prosecution/Plaintiff	Direct Examination		
Second Witness:	Cross-Examination		
	Witness Presentation		
Prosecution/Plaintiff	Direct Examination		
Third Witness:	Cross-Examination		
	Witness Presentation		
Defense/Defendant	Cross-Examination		
First Witness:	Direct Examination		
	Witness Presentation		
Defense/Defendant	Cross-Examination		
Second Witness:	Direct Examination		
	Witness Presentation		
Defense/Defendant	Cross-Examination		
Third Witness:	Direct Examination		
	Witness Presentation		
<b>CLOSING ARGUMENT</b>			
<b>TOTAL SCORE: Add scores in each column.</b>			

*Please deliver ballot to runner before debriefing.*

**TIEBREAKER, if needed:**  
Plaintiff (P) or Defendant (D)



DO NOT SEPARATE COPIES!!!!  
WHITE - Coordinator Copy  
YELLOW - Defense/Defendant Copy  
PINK - Prosecution/Plaintiff Copy

\_\_\_\_\_  
Judge's Signature