32nd Annual Colorado Bar Association

2017 HIGH SCHOOL MOCK TRIAL PROGRAM

The Official Colorado Rules of Tournament and Rules of Evidence

Kyle Roberts vs. Productions of THC, Inc.

WRITTEN BY

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HIGH SCHOOL MOCK TRIAL
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Litigation Section

Colorado High School Mock Trial Rules

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COLORADO MOCK TRIAL CODE OF ETHICS

1. Team members, coaches and team supporters shall exhibit professionalism and good sportsmanship, showing respect for their fellow team members and coaches, supporters, opponents, judges and scoring panelists, volunteers, competition staff, committee volunteers, and courthouse and hotel personnel. [1]

2. Disruptive behavior is prohibited, including, but not limited to: rule violations; horseplay; inappropriate comments; inappropriate reactions to judges' rulings, team pairings or team results; unprofessional conduct; property damage and littering; and/or breaches of decorum that affect the conduct of a trial, or that impugn the reputation or integrity of any team, school, participant, supporter, court officer, judge, or the mock trial program.

3. The use and possession of alcohol, drugs, and weapons is forbidden in the course of all mock trial activities, at all competition sites, and at all mock trial events, including those sponsored by schools, teams, coaches, students, and supporters.

4. Participants in the CBA Mock Trial Program, defined as the CBA Mock Trial Committee, the CBA and its staff, schools, teams, coaches, students, supporters and other individuals, share the responsibility to know, follow, and enforce this Code of Ethics and the Rules of Competition. Coaches have a special responsibility to lead in this regard, to discourage willful violations of the letter and the spirit of this Code and the Rules, and to enforce compliance appropriately. Team members and coaches are responsible for educating team supporters in, and encouraging their compliance with, this Code and the Rules.

[1] Note that in 2015 more than 110 mock trial teams participated in the CBA Mock Trial Program. Only twenty-four teams advanced to the State tournament, and only one of these teams was named the State Champion. All in the Mock Trial program expect that students, teacher coaches, coaches, family members, and supporters will accept the results of competition in a mature, professional, and sportsmanlike manner. Coaches help prepare students for success by placing the highest priority on education, excellent preparation, and performance, rather than on winning. All need to handle the rigors of the tournaments with dignity and class. Anger, bad sportsmanship, and public displays of frustration are antithetical to the goals and objectives of Mock Trial.

GENERAL TOURNAMENT INFORMATION

The following Rules of the Colorado Mock Trial Program govern the State tournament, and generally govern the Regional tournaments. However, Regional Tournament Coordinators may adjust these rules with approval from the State Mock Trial Coordinator or Mock Trial Committee, as appropriate. Therefore, check with your Regional Tournament Coordinator prior to your Regional Tournament for any local changes and/or adjustments of the State Rules. For example, the local tournament may or may not power-match, and may or may not include a championship round.

Local Discretion: Regional Tournament Coordinators have the responsibility to conduct their tournaments as determined by their local bar association and by the needs of the local courts. The manner in which the tournaments are scheduled, teams are matched, teams are scored, teams advance, and winners are named is as determined by the local Regional Tournament Coordinator, and as approved by the State Mock Trial Coordinator and the Mock Trial Committee as appropriate.

Local Media Coverage: Regional Tournament Coordinators are encouraged to maximize media coverage of mock trial events. In doing so, the media may attend mock trial rounds to cover the event and take pictures, audio and/or videotape. Media representatives should be well briefed in order to minimize disruptions to the trial rounds.

Clarifications of these Mock Trial Rules and the case materials: Any request for clarification of these Rules or the case materials shall be submitted to the CBA Mock Trial Committee **in writing no later than January 1, 2016, addressed to the** CBA Mock Trial Committee, 1900 Grant St., Ste. 900, Denver, CO 80203, or via e-mail to cbamock@cobar.org. Written responses to the questions will be provided to all registered teams as soon as practical, and prior to the tournaments, via the CBA Mock Trial Program website at: http://www.coloradohighschoolmocktrial.com/. All teams are fully responsible for informing themselves of these clarifications or changes. The Mock Trial case problem and these Rules are posted on the mock trial website: http://www.coloradohighschoolmocktrial.com/

RULES OF TOURNAMENT FORMAT

1. **Registration** All required registration materials and fees must be completed by the registration deadline. There are no exceptions to this rule. This deadline is in place to determine the location where each school will participate for their regional tournament.

2. **Regional Tournaments**

2.1 Regional Assignments and Advancement: After registration closes, teams will be assigned to regions based on geography, local bar association resources, and competitive balance. E.g., a team may be assigned to a region other than its natural geographic region in order to create an even number of teams for each tournament. Each regional tournament will advance its proportionate share of teams to compete in the State tournament, which is determined by calculating the ratio of the number of teams in the regional tournament to the number of teams registered in the state.

For example, if there are 72 teams registered statewide and a total of 18 advance to the state tournament, then 25% of each regional tournament field will advance. Thus, if a local tournament has 13 teams, that tournament will advance 25% of its field, or 3 teams (25% of 13 = 3.25 or 3 teams), to the state tournament. The state coordinator will notify Regional Tournament Coordinators of the number of teams that will advance from that region prior to the first scheduled regional tournament.

Minimum Number of Teams and Schools: A regional tournament should have at least six teams registered with the CBA to advance a team to the State tournament. A tournament may be held with fewer than six teams at the discretion of the CBA Mock Trial Committee. A regional tournament must have at least two high schools represented to advance a team to the State tournament.

2.2 Tournament Structure

2.2.1 Tournament coordinators are encouraged to structure their tournaments as follows:

- Four rounds of competition, with a random first-round draw and subsequent rounds paired using a modified Swiss power matching (See Rules of Competition 8.4.1 thru 8.4.4);
- State tournament procedures regarding composition of scoring panels, judging, and scoring criteria;

- Keeping the results of individual rounds confidential until completion of the tournament; and
- An optional championship round.

2.2.2 Tournaments may be scheduled over several weekdays, over a weekend, or during weeknights to take advantage of local resources (*e.g*., judges, courtrooms, and scoring panelists).

2.3 Regional tournaments must be scheduled to conclude no later than two weeks prior to the State tournament.

2.4 Regional Tournament Coordinators are encouraged to provide judge and scoring panelist training prior to each round in the tournament. Areas to emphasize include: scoring ranges and definitions, disputes, performance vs. merit-scoring, technical vs. performance-scoring, no unfair extrapolations, witnesses bound by statements, and material omissions. CBA State Coordinator has training materials.

2.5 Tournament coordinators should restrict gallery attendance at the championship round to teams (members and coaches) that will NOT be advancing to the state tournament, and family, friends, and supporters of the competing teams.

2.6 Tournament coordinators are encouraged to send copies of score sheets to the competitors following the conclusion of their tournaments, prior to the State Tournament.

2.7 Tournament coordinators will notify the CBA State Coordinator of the teams they are advancing to the state tournament, as well as which team is their number one seed by certification.

2.8 Certification requires that the regional tournament coordinators have an official team roster from each team competing in a local tournament. This official team roster must be identical to the team roster submitted with original registration materials provided to the CBA State Coordinator or CBA State Committee during the registration process. The official team rosters of those teams advancing to the State tournament must be forwarded to the CBA State Coordinator immediately upon completion of the local tournament. Only the team members listed on the original registration materials and the local tournament roster will be allowed to compete in the state tournament. See Rule B.2.1. under Rules of Competition.

2.9 Tournament Coordinators are encouraged to provide students with certificates of participation.

2.10 Local bar associations may deviate from these guidelines as required by limitations on local facilities and volunteer resources. Deviations from these guidelines should be approved by the CBA Mock Trial Committee prior to the commencement of the local tournament.

3. State Tournament

3.1 Maximum Number of Teams: The number of teams advancing to the state tournament will be determined after the total number of teams competing at the local levels throughout the state has been determined. If a school/team that has earned the chance to compete at the state tournament chooses not to advance to the state tournament, the host of the local tournament will select the team next in line of succession to advance to the state tournament.

3.2 Maximum Number of Teams from One School: No more than two teams from any one school may advance to the state tournament.

3.3 Tournament Structure: The state tournament shall be conducted as follows:

- Four rounds of competition, with a random first round draw (with the exception that no regional number one seed will be paired against another regional number one seed) and subsequent rounds paired using modified Swiss power matching;
- A championship round;
- The results of individual rounds will be kept confidential until completion of the tournament;
- State tournament procedures regarding composition of scoring panels, judging, and scoring considerations; and
- The winner of the championship round will be eligible to represent Colorado at the National High School Mock Trial Tournament in May.

3.4 Tournament Dates: The state tournament will be a two-day tournament, preferably Friday and Saturday, with two trial rounds of competition on Friday afternoon and two rounds of competition and the championship round on Saturday.

3.5 Tournament Results: Copies of score sheets and final team standings will be e-mailed to the school following the conclusion of the competition, except in the event of a dispute, in which case scoresheets may not be distributed.

4. Advancement to Nationals and Team Composition

4.1 Team Composition at Nationals: At the national tournament, each state is limited to eight students (six participating as witnesses and attorneys, and two alternates). Additionally, a person will be designated as the official timekeeper. The official timekeeper must meet the requirements of National Rule 1.4 as the team's official timekeeper, and may be (but need not be) one of the eight official members.

4.2 The Colorado State Champion team has until 5 P.M. local time on the Wednesday following the State Tournament to inform the State Coordinator whether or not

they will attend the National Mock Trial Tournament. No notice will be construed as a decision to decline participation. If, for any reason, the Colorado champion cannot participate at Nationals, the second place team will be eligible. If neither of these teams can participate, the CBA Mock Trial Committee may select an alternate representative team.

4.3 No later than 5 P.M. local time on the Wednesday following the State Tournament, the State Champion team must notify the State Coordinator if any substitute(s) are needed to supply the minimum number of team members.

4.4 The deadline for any alternate team designated by the State Coordinator to attend the National tournament, and if any substitute(s) are needed to have the minimum number of team members, shall be 5 P.M. local time on the third business day after the State Coordinator designates such team as the alternate.

4.5 With respect to the notice of any substitute(s) by the State Champion or any alternate team representing Colorado at the National Mock Trial Tournament, such notice must include an affidavit from each team member who cannot attend stating the reason why the team member cannot attend, and must include an affidavit from each substitute verifying his/her participation in the Colorado tournaments (State and regional) and verifying the person's high school. Exceptional, extenuating circumstances shall be necessary for any substitute. Approval of the substitutes will be subject to the sole discretion of the State Coordinator. No substitution will be permitted, for any reason, unless such approval is obtained.

5. **The Colorado Bar Association, thanks to a grant from the Colorado Bar Foundation and the Colorado Bar Litigation Section**, normally will make a financial donation to the team participating in the national championship to help defray travel expenses; however, the team and its school will be primarily responsible to raise funds as needed.

RULES OF COMPETITION

1. Administration

1.1. Rules

All trials will be governed by the Rules of the Colorado High School Mock Trial Competition, the Colorado High School Mock Trial Rules of Evidence, and the specific courtroom location rules of decorum and security.

Questions or requests for interpretation of these rules shall be submitted to the State Coordinator and the CBA Mock Trial Committee at 1900 Grant St., Ste. 900, Denver, CO 80203 or emailed to cbamock@cobar.org

1.2. Conduct

No team Member, coach or observer associated with a mock trial team is allowed to enter any mock trial courtroom during a trial in which his/her team is not competing.

Disruptive behavior is prohibited, including, but not limited to: rule violations; horseplay; inappropriate comments; inappropriate reactions to judges' rulings, team pairings or team results; unprofessional conduct; property damage; and/or, breaches of decorum that affect the conduct of a trial or that impugn the reputation or integrity of any team, school, participant, court officer, judge, or the mock trial program.

Food and beverages are not allowed in the courtrooms, or in any area of the courthouse not designated as an eating area. Teams bringing food or beverages into the courtrooms, or any area not designated for consuming food, are subject to sanctions.

Littering of, or property damage to, a courtroom or other public property will result in an automatic cleaning and/or replacement fine assessed to the school and team. Cleaning fees and resulting fines generally run a minimum of $250.

1.2.1. Team Conduct

Team members are bound by the Rules of Competition, the Code of Ethical Conduct, and the rules of the specific location courthouse. Students also shall strive to model the highest standards of sportsmanship and ethical conduct at all times.

1.2.2. Coaches' Conduct

Attorney and teacher coaches shall uphold the Rules of Competition, the Code of Ethical Conduct and the rules of the specific courthouse. Additionally, coaches shall comply with their own professional codes, rules, and ethical standards. Finally, coaches shall

instill in their student team members, team parents, and other team gallery observers the highest standards of sportsmanship and ethical behavior.

1.2.3. Team Supporters' and Gallery Conduct

Team supporters, led, educated, and encouraged by the team members and coaches, shall uphold the Code of Ethical Conduct and the rules of the specific location courthouse. Gallery observers, encouraged by mock trial participants, and as enforced by courtroom monitors and the Regional and State Committee members and tournament staff, shall follow the Code of Ethics and the rules of the specific location courthouse.

2. Teams

2.1. Student Eligibility

Students must be currently enrolled as full-time students in their schools in order to participate in the state and national tournaments, unless a student has graduated from their school earlier that academic year. Such student must have graduated in good standing within one semester or two quarters or trimesters of the mock trial competition and have been a full-time student of the current senior class at the beginning of the current academic year.

Teams must be comprised of students from the same high school.

Requests for exceptions to this rule must be submitted one month before the team's Regional Tournament in writing to the CBA Mock Trial Committee.

2.2. Team Composition and Rosters

2.2.1. The Official Team Roster

Each team official roster shall consist of:

- A team roster of a minimum of six competing students and a maximum of twelve competing students, identifying the role(s) of each student as Plaintiff/Prosecution or Defense, and attorney or witness;
- Identification of student timers, whether optional non-competing student timers or competing team members;
- A single designated teacher-coach, jointly responsible with the designated attorney-coach for communications with the Mock Trial State Coordinator and the Mock Trial Committee; and
- A single designated attorney-coach, jointly responsible with the designated teacher-coach for communications with the Mock Trial State Coordinator and the Mock Trial Committee.

Each team member and the team's designated coaches, shall be listed on the official team roster submitted at the local tournament level. The team roster becomes official at the time of its submission to the Regional Coordinator, and thereafter the competing student team members will remain fixed throughout the regional, state and national tournaments. At no time will a student not listed in the school's regional tournament team rosters be allowed to compete at the State or national tournaments.

Substitute and additional coaches will be allowed without notification to the State Mock Trial Coordinator.

Only six students on a team may compete in any given tournament round (three attorneys and three witnesses).

The designation of teacher- and attorney- coaches on official rosters are not meant to limit the number of coaches on a team. Rather, the designations are meant to establish clear lines of communications between teams and the CBA.

2.2.2. The Official Team Roster Form

The original Official Team Roster Form, including the attached Code of Ethical Conduct, must be e-signed by each member of the team; the timekeeper(s); the designated teacher; and the designated attorney coach. This form is used to produce team participation certificates at all tournaments. All students and coaches must be listed. By submission of the form teams acknowledge:

- All team members and coaches have read the Code of Ethical Conduct,
- all are from the school indicated at the top of the form, and
- all coaches and team members accept responsibility for leading, enforcing and encouraging, as appropriate, parents and other observers to comply this code.

Teams shall use the Official Team Roster/Code of Ethical Conduct form provided by the CBA at www.coloradohighschoolmocktrial.com.

2.2.3. Exceptions to the Official Team Roster

Teams, in the person of a designated teacher or attorney coach, may apply for exceptions to this rule in writing directly to the Colorado State Coordinator. Such a request must be made two weeks before the respective tournament—to allow for, e.g., adjustments to the tournament list of volunteers in the event a team drops out and cannot be replaced, or possible replacement of the team by another team from its region for the State tournament. Such applications must include:

- A statement in writing from a designated coach explaining the situation fully;

- A signed statement from each team member who cannot attend stating the reason why the team member cannot attend; and
- A signed statement from each substitute verifying his/her participation in the Colorado tournaments (State and regional) and verifying the person's high school.

Extenuating circumstances, and good cause and good faith, are necessary for any substitutions. Approval of the substitutes, or disqualification of the team, is at the sole discretion of the State Coordinator. In the event that a team disqualification would result in a significant disruption of a tournament, the disqualified team may be asked and allowed to participate as a "ghost" team, i.e., a participating, but not eligible, team.

2.2.3.1. Replacing missing students. In the event that a team is missing one of its participating team members for a trial round, due to illness or for any other good cause and in good faith:

- the missing team member may be replaced by a team member who is not otherwise participating in that round with no penalty.
- In the event that the missing team member is replaced by a team member who is participating in that round in another role, the missing participating team member will receive a "0" point score for each performance part he/she misses in that trial round and the opposing team member(s) impacted by the missing person shall receive a "10" point score for their role(s).

2.2.4. Trial Rosters

Copies of the trial rosters must be completed and duplicated by each team prior to arrival at the courthouse. Teams must be identified on the roster by the code assigned to them at registration. No team origin identifying comments, symbols, or pictures shall appear on the form. Before the beginning of the trial, the teams must exchange copies of the trial roster. Teams shall use the Trial Rosters attached to these rules, or visit the program website at www.coloradohighschoolmocktrial.com for all forms.

2.3. Team Responsibilities

Teams shall present both sides of the case. For each trial round, teams shall use three students as attorneys and three students as witnesses.

Team attorneys shall evenly divide the examinations. Each of the three attorneys shall conduct one direct examination and one cross-examination. The attorney who examines a particular witness on direct examination is the only team member who may make

objections to the opposing attorney's cross-examination questions. The attorney who cross-examines a witness shall be the only team member permitted to make objections during the direct examination of that witness.

In addition, one attorney shall present the opening statement, and another attorney will present the closing argument.

Each team shall call each of its witnesses. The order of the witnesses being called to the stand is at the discretion of the team. Witnesses may be called to the stand only by their own team attorney conducting that witness's direct examination (case-in-chief). Once direct examination is completed, the opposing team may cross-examine the witness. Re-direct and re-cross will be permitted at the discretion of the presiding judge. Witnesses may not be recalled by either side.

3. The Case

The case will consist of a fact pattern that may contain any or all of the following: statement of facts, indictment, complaint, answer, stipulations, jury instructions, case law, witness statements, affidavits, exhibits, and such other material as that case requires.

The case shall include three witnesses per side, each of whom shall have gender neutral names and characteristics.

Stipulated exhibits are stipulated as to their authenticity only, and not to their admissibility, unless otherwise so stated in the case. The authenticity of exhibits so stipulated may not be disputed at trial. Stipulations shall be considered part of the trial record and can be discussed accordingly throughout the trial.

4. Trials

4.1. Jury and Scoring Panel Composition

The case will be tried to a jury which shall consist of the scoring panelists. Presentations are to be made to the presiding judge and scoring panelists. Teams may address the scoring panel as the jury.

The scoring panel shall consist of at least three individuals. The composition of the panel and the role of the presiding judge will be set at the discretion of the State Tournament Coordinator. The State Tournament Coordinator is encouraged to integrate educators and community representatives onto scoring panels. However, each panel shall have at least one attorney as a scoring judge. The following are examples of potential scoring panels:

- One presiding judge and three attorneys as scoring judges

- One presiding judge, two attorneys, and one educator/community representative as scoring judges
- One presiding/scoring judge and two attorneys as scoring judges
- One presiding/scoring judge, one attorney, and one educator/community representative as scoring judges

4.2. Videotaping/Photography

Any team has the option to refuse participation in videotaping, audio recording, and still photography by opposing teams. However, videotaping, audio recording, and still photography by the media and the Colorado Bar Association will be allowed.

If either competing team video or audio records a trial round, the recordings are only to be used by the two competing teams. These recordings shall not be given to, traded, exchanged, or sold to another team under any circumstances without the express written consent of the CBA Mock Trial Committee. Violations of this rule may result in sanctions up to and including disqualification.

4.3. Scouting Opposition Teams Is Forbidden.

There are no exceptions to this ethical responsibility.

In keeping with the spirit of fair competition, non-participating team members (team members outside the bar), alternates, coaches, parents, siblings, and any other persons directly associated with a mock trial team are not allowed to view another team's performance, so long as the individual's team remains in the competition. The exceptions are:

4.3.1. Teacher-coaches may view any team from his/her school;

4.3.2. Teacher coaches or attorney coaches who are the parents of students competing on a team other than the team the teacher or attorney is coaching may watch his/her child; and

4.3.3. Any attorney coach, teacher-sponsor, parent, sibling, or other spectator associated with the school of a mock trial team may observe another team's round if they obtain permission from each team participating in that round, and disclose their presence and the teams' acceptances to the judge during preliminary matters.

4.4. Unauthorized Communications During Trial

Coaches, teachers, non-participating team members, and observers shall not talk to, signal, hand notes to, communicate with, or coach their teams during trial. Timekeepers are authorized to communicate only the time taken or remaining, and nothing else. This rule

remains in force during any recess taken. Participating team members (those inside the bar) may, among themselves, communicate during the trial only verbally or through handwritten notes, not electronically; however, no disruptive communication is allowed.

No one (including, but not limited to, team members, coaches, teachers, and observers) shall communicate during trial with competing team members in any way, including use of any device (including, but not limited to, laptops, computers, pagers, beepers, phones, PDAs, organizers, radios, headsets, tape players, MP3 players, and portable fax machines).

Competing team members may not use any device capable of communication during trial.

Coaches, teachers, non-participating team members (those outside the bar), and observers must remain outside the bar in the gallery of the courtroom at all times during the trial, even if a recess is taken, unless there is an emergency inside the bar.

4.5. Courtroom Seating

The Plaintiff/Prosecution shall be seated closest to the jury box. No team shall rearrange the courtroom without prior permission of the presiding judge or courtroom monitor. Each team shall have all three witnesses and three attorneys seated inside the bar. It is up to the Defense Team whether the Defendant sits at the counsel table during the trial.

4.6. Preliminary Matters

A copy of the trial rosters shall be provided to the presiding judge, the scoring panelists and the opposing team at the commencement of each trial.

Additionally, the Prosecution/Plaintiff's attorney presenting the opening statement shall provide a copy of the stipulations to the presiding judge and the scoring prior to the opening statements.

Team members may collect these documents at the end of the trial for use in subsequent rounds.

The stipulations, indictment, or the charge to the jury shall not be read into the record.

4.7. Supplemental Material and Costumes

Teams may use and refer only to material provided in the case. No illustrative aids—or any material not provided in the case—or props of any kind may be used. Enlargements of the case materials are not permitted. Exhibit notebooks are not permitted. Teams may present to the presiding judge and scoring panelists only the exhibits and the witness statements exactly as provided in the case material, and the trial rosters. Teams may mark up exhibits–

–only during testimony, not before—for use as demonstrative exhibits. Such marked-up demonstrative exhibits may be admitted as evidence upon proper submission and at the discretion of the trial judge.-

Props and costumes are prohibited. Costumes include, but are not limited to, hairstyles, clothing, accessories (example: false glasses, hats, pins, gloves, scarves, etc.), and make-up, including false moustaches, that are case-specific.

In the event a team member or team uses material not provided in the case, a prop or props, or appears at trial in costume, the team may be penalized. At regional tournaments, the Regional Tournament Coordinator and, if available, CBA Mock Trial Committee members, will assess the penalty. At the State Tournament, the CBA State Coordinator and Mock Trial Committee will assess the penalty. The penalty may be loss of any number of points or any number of ballots for that round, or by disqualification from the tournament, depending on the degree of offense. The presiding judge and/or scoring panelists may recommend such a penalty.

5.1 Team Courtroom Decorum.

All team members will act in a polite and professional manner at all times.

5.1.1 Attorney Demeanor. Unless excused by the presiding judge, attorneys will stand during opening statements, direct and cross-examinations, objections, and closing arguments. Attorneys should not address opposing counsel directly during the trial. Attorneys shall address the presiding judge as "Your Honor" or "Judge ____."

5.1.2 Witness Demeanor. Witnesses are not permitted to read their statements/affidavits verbatim in the trial. Additionally, the witnesses are not permitted to refer to their written statements/affidavits during the trial, except to refresh recollection (direct) or impeach (cross). If asked questions outside the scope of their statements/affidavits, they may respond in accordance with Rule 6.5. Testimony shall be consistent with facts set forth in the witness' statements/affidavits.

5.2 Presiding Judge Pre-Trial Procedures

At the beginning of the trial, the presiding judge will:

1. Ask each side if it is ready for trial.

2. Ask each side to provide the judge and scoring panelists with copies of its trial roster with the team's code. No words, symbols, or other marks that identify the team by its school shall be on the trial roster.

3. Confirm that if video recorders are present and being used, that both teams have approved the taping of the round. (Coaches/gallery are not permitted to tape the trials without permission.)

4. Inform teams, as well as gallery members, that the Colorado Bar Association may be taking photographs of the competition during the round, and that team participation in the state tournament grants automatic permission and the use of these photos by the Colorado Bar Association.

5. Ask anyone in the gallery who is connected with teams not competing in that round (student members and coaches of other schools or of the same school but a different team) to leave the courtroom. There are two exceptions to this rule. See Rule 4.3.

6. Remind the teams that no recesses will be allowed, with the exception of those granted for a health emergency, and especially not between the end of witness examination and the beginning of closing arguments.

7. Ask each scoring panelist if s/he has any reason to be biased in judging either team. If any panelist is concerned that s/he may be, the judge will notify the courtroom monitor, the State Tournament Coordinator, or a CBA Mock Trial Committee member, and arrangements may be made to replace the panelist. (Team members may raise an objection regarding a particular scoring panelist at this time as a preliminary matter. The objection is deemed waived if it is not made as a preliminary matter.)

8. Remind the teams and coaches that any disputes arising out of this competition must be reported in accordance with the competition rules.

9. Remind the teams that their compliance with time requirements will be considered in scoring individual performances.

10. Confirm that no coach or team member (other than a timekeeper, if a timekeeper is not provided by the competition committee) is seated in the jury box.

11. Ask each side to introduce the participating team members (attorneys and witnesses).

12. Swear in the team members, the gallery, the scoring panelists, and the witnesses.

    The presiding judge will ask all members in the courtroom to stand for the swearing in and explain that, in an effort to maintain a level of professionalism and to uphold the Code of Ethical Conduct during and after these mock trial proceedings, all members of the gallery, scoring panels, and teams shall stand for the swearing in to the oath of the Code of Ethical Conduct.

    > "*Team members, please raise your right hands. Team members, do you promise that the presentation you are about to give will faithfully and truthfully conform to the facts and rules of the mock trial competition?*"
    >
    > *"Witnesses, do you promise that the testimony you are about to give will faithfully and truthfully conform to your witness statements, that you will not add material facts or opinions which are not contained in the Case Problem, and that you will follow the rules and procedures of the mock trial competition?*"
    >
    > *"Gallery members, including teacher and attorney coaches, family members and friends, please raise your right hands. Do you promise to represent yourselves as positive role models, and to behave in a manner that exemplifies ethical and professional sportsmanship during and after this mock trial round?"*
    >
    > *"Scoring Panelists, please raise your right hands. Do you promise to adjudicate the mock trial competition as fairly and objectively as possible in accordance with the facts, procedures and rules of the mock trial competition?*"

5.3 General

- **Sequestration.** The teams may not request witnesses' sequestration.
- **Bench Conferences.** Teams should not request bench conferences. However, if a bench conference is requested and granted by the presiding judge, it shall be held in open court for educational and scoring purposes. Time will stop for bench conferences. The timekeeper shall resume time upon the presiding judge's order to proceed.
- **Motions.** No non-evidentiary or dispositive motions may be made, except a motion for an emergency recess.
- **Emergencies.** A motion for a recess may be used only in the event of a health emergency. Should the recess be granted, to the greatest extent possible, the team members are to remain in place. Teams are not to communicate with anyone outside the bar during the recess.
- **Offers of Proof.** Offers of proof may be requested or tendered only for the exclusive purpose of assisting the presiding judge to rule on an objection, and for no other purpose.
- **Voir Dire.** Voir dire examination of a lay witness is not permitted. The presiding judge may allow brief voir dire of an expert witness regarding the witness's qualifications. Time used for voir dire is chargeable time, i.e., counts toward total time limit of the team's direct and cross-examinations.
- **Use of Notes.** Attorneys are not restricted from the use of notes while presenting any segment of their case. Additionally, participating attorneys and witnesses may communicate during the trial with each other verbally or through the use of notes.

5.4 The trial sequence is as follows.

1. Plaintiff/Prosecution Opening Statement
2. Defense Opening Statement
3. Plaintiff/Prosecution Case-in-Chief
    a. Plaintiff/Prosecution direct examination of their first witness.
    b. Defense cross-examination of the first witness.
    c. Plaintiff/Prosecution re-direct examination of first witness (optional and only with permission of presiding judge).
    d. Defense re-cross-examination of the first witness (optional and only if re-direct has occurred). Re-cross will be limited to the scope of re-direct.
    e. Same process as steps a-d for the second and third witnesses.

4. Defense Case-in-Chief
    a. Defense direct examination of its first witness.
    b. Plaintiff/Prosecution cross-examination of the first witness.
    c. Defense re-direct examination of first witness (optional and only with permission of presiding judge).
    d. Plaintiff/Prosecution re-cross-examination of the first witness (optional and only if re-direct has occurred). Re-cross will be limited to the scope of re-direct.
    e. Same process as steps a-d for the second witness.
    f. Same process as steps a-d for the third witness.

5. Prosecution/Plaintiff Closing Argument
6. Defense Closing Argument
7. Prosecution/Plaintiff Rebuttal Argument if properly reserved (optional) and at the presiding judge's discretion.

If the Prosecution/Plaintiff reserved a portion of its closing time for a rebuttal, the rebuttal argument shall be 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.

5.5 Scope of Closing Arguments

Closing arguments should be based on the admitted evidence and the reasonable inferences that can be drawn from the admitted evidence.

5.6 Time Keeping

Time limits are mandatory and will be strictly enforced. Only non-participating student timekeepers are allowed to keep time for teams.

When a student timekeeper displays the time remaining to a student performer, the student timekeeper also shall display the time remaining to the presiding judge. Both student timekeepers should track time for both sides and show their time cards during the trial round. Both student timekeepers should confer with each other after each trial segment to ascertain time discrepancies. If student timekeepers have a time

discrepancy greater than 15 seconds, they should notify the presiding judge. When time runs out for a specific segment of the trial, the student timekeepers must stand and say "STOP" in a voice loud enough be heard by the performing student, the presiding judge and the scoring panelists. Failure to do so may subject the violating team to disqualification. The following time limits shall be used:

• Opening statement	5 minutes per side
• Direct examination and optional re-direct	25 minutes per side
• Cross examination and optional re-cross	20 minutes per side
• Plaintiff/Prosecution closing argument and Optional rebuttal argument	Up to 5 minutes, depending on reserved time remaining
• Defense closing argument	Up to 5 minutes

5.6.1 Time Extensions

The presiding judge shall not grant time extensions.

If time for a specific segment of the trial has expired and an attorney continues, the scoring panelists will determine individually the impact on the individual's performance score.

5.6.2 Timing Objections, Delays or Bench Conferences

Time for objections, extensive questioning by the presiding judge or administering of the oaths will not be counted as part of the allotted time during examination of witnesses, opening statements or closing arguments.

Time does not stop for introduction of exhibits.

Time shall stop for bench conferences. Please see Rule 5.2.

5.6.3 Time Keeping Aids

Student timekeepers should use time keeping place cards. These cards may not exceed 8 1/2 X 11" in size. Additionally, student timekeepers should use a stopwatch or similar timing device. All timekeepers should have time keeping place cards in the following increments: 20 minutes, 15 minutes, 10 minutes, 5 minutes, 4 minutes, 3 minutes, 2 minutes, 1 minute, 40 seconds, and 20 seconds. Teams may use additional place cards at different increments at their discretion.

5.6.4 Discrepancies in Time Between Team Timekeepers

If timing variations of 15 seconds or more occur at the completion of any segment of the trial, timekeepers are to notify the presiding judge that a time discrepancy has occurred.

The presiding judge will rule on any time discrepancy before the trial continues. Timekeepers will synchronize stopwatches to match the presiding judge's ruling (for example if the Plaintiff/Prosecution stopwatch indicates 2 minutes left on a direct examination and the Defense stopwatch indicates time is expired, the presiding judge might decide to split the difference in the timing variation and give Plaintiff/Prosecution 1 minute to conclude the direct examination. Defense would adjust timing to allow for the 1 minute timing decision.)

Any discrepancies between timekeepers less than 15 seconds will not be considered a violation.

Timekeepers may raise time discrepancies only at the end of each segment of the trial presentation. No time disputes will be entertained after the trial concludes. The decisions of the presiding judge regarding the resolution of timing disputes are final.

6. Unfair Extrapolation

Mock trial competitors are to present and argue *the facts provided in the case.* Although participants are encouraged to present the facts and information contained in the case imaginatively, such presentation may not use facts outside the case problem to create an advantage for the proponent or to prejudice the opposing team. Teams must be able to rely on the facts stated within the case. Accordingly, teams may not add material facts or opinions which are not contained in the Case Problem.

6.1 Witnesses Are Bound by Their Own Statements

Each witness is bound by the facts and opinions contained in his or her own statement, the Stipulated Facts and the exhibits.

A witness may not deny or contradict facts or opinions contained in his or her own statement.

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

Expert witnesses are bound by the opinions contained in their witness statements, and only to that extent may give opinions to address or rebut opinions of other expert witnesses and testimony of fact witnesses.

6.2 Unfair Extrapolation Is Prohibited

Unfair extrapolation occurs if a witness testifies on direct or re-direct examination:

- to a fact or opinion that is not in the Case Problem, and
- the fact or opinion is material.

Facts or opinions are material if they affect the merits of the case. A fact is not material if it merely provides background information or develops the character of a witness. Immaterial facts are not unfair extrapolation. One test that judges, panelists, competitors and coaches can use to assess whether a fact or opinion is material is if it is one that could reasonably be used in the party's closing argument.

Unfair extrapolation is prohibited.

A witness may testify to any fact that is in the witness's statement, in the Stipulated Facts, or in an exhibit, and may testify to any fact in another witness's statement if the testifying witness would reasonably be expected to know such fact under the circumstances. On direct examination, a witness cannot disagree with a fact in another witness' statement unless the contrary fact is contained elsewhere in the Case Problem.

It is not unfair extrapolation for a witness to testify to a fact which is not in the witness' statement if the fact is truly neutral and does not create an advantage for the proponent or prejudice to the opposing team. Although such testimony is not unfair extrapolation, the witness may still be subject to impeachment.

6.3 Applicability to Cross Examination

If, on cross examination, a witness is asked a question which calls for information that is *NOT* the witness's statement, the witness may:

- decline to answer on the basis that the information is not in the witness's statement;
- indicate that the information is not in the witness's statement but offer to provide an answer; and/or
- provide a reasonable answer, as long as the answer is responsive to the question and does not contradict the facts contained in the witness's statement.

It is not unfair extrapolation for the witness to respond with a fact that is not in the Case Problem as long as the answer fits within the above restrictions.

If a question on cross examination seeks information which *IS* in the witness's statement, it is improper for the witness to contradict his or her statement.

Nevertheless, such a violation must be handled through impeachment of the witness. The unfair extrapolation objection may not be made during cross examination.

6.4 Expert Witnesses

Only the witnesses specifically identified as expert witnesses in the Case Problem may be tendered as experts under Rule 702.

It shall not be considered unfair extrapolation for an expert witness to testify that s/he agrees or disagrees with facts or opinions that are contained in another witness' statement.

6.5 Unfair Extrapolation Objection

Unfair Extrapolation should normally be addressed through cross-examination and impeachment, and the unfair extrapolation objection is intended to be used only for egregious violations. Accordingly, the scoring panelists may not only deduct points for unfair extrapolation, but may also deduct points from the *objecting* team if they conclude that the objection was not made in good faith, was improvident, or demonstrated poor sportsmanship.

If, *during direct examination*, a witness testifies to a fact or opinion that is not in the Case Problem, and the fact or opinion is material (as defined in Rule 6.5.2, above), the opposing attorney may object to the unfair extrapolation.

When an unfair extrapolation objection is made, the attorney conducting the examination may:

1) withdraw the challenged testimony or question,
2) concede the objection,
3) establish that the challenged information is in the case problem, or
4) establish that the challenged information is not material.

Argument on the objection is to be made in open court. It is within the sole discretion of the presiding judge how much time will be permitted for such argument.

The resolution of any unfair extrapolation objection rests solely with the scoring panelists, in accordance with this language that the presiding judge may read to the scoring panelists:

> *You, the scoring panelists, are the sole arbiters of this dispute. Based upon your own individual observations, good faith judgment, and consistent with the intent of this judicial process, you may decide that:*

(a) There was no extrapolation; or

(b) The statement was not unfair extrapolation (or the question did not ask for unfair extrapolation) as it was not material; or

(c) The statement was unfair extrapolation (or the question was asking for unfair extrapolation) as it was material.

The ultimate decision is in the discretion of each of you individual scoring panelists. Consistently with your decision, you may award one or more points, deduct one or more points, or take no action at all with respect to any of the parties involved. If you determine that there was no unfair extrapolation (or that there was no question asking for unfair extrapolation) you may deduct one or more points from the objecting party if you believe that the objection was not made in good faith, was improvident, or was poor sportsmanship. Your decision is final.

The scoring panelists' decision is final. Consistently with the goals and objectives of the mock trial program, this serves to educate students about the potentially varying perspectives of observers, and to encourage contemporaneous analytical thinking as well as fair and ethical conduct in the courtroom.

Nothing in this Rule 6.5.5 prevents scoring panelists from independently finding that there has been unfair extrapolation, even in the absence of an objection, and to deduct points at their discretion. ***They are, however, discouraged from doing so unless they are convinced they know the case better than the students do.***

7 Objections

Attorneys shall state their objections loudly enough to be heard by the presiding judge, scoring panelists, and opposing counsel. Objections should begin by stating, "Objection, your honor." Once an attorney has the attention of the presiding judge, the attorney should state the basis for the objection.

7.1 List of Objections

The following is a list of objections that may be used. This is not an exhaustive list. Teams are not precluded from raising additional objections that are available under the Colorado High School Mock Trial Rules of Evidence.

a. Ambiguous
b. Argumentative
c. Asked and Answered
d. Assuming Facts Not in Evidence
e. Compound Question
f. Cumulative
g. Hearsay
h. Improper Foundation

i. Improper Lay Opinion
j. Lack of Foundation
k. Lack of Personal Knowledge
l. Leading
m. Narrative
n. Relevance
o. Speculative
p. Violation of the Rules of Competition

7.2 Objections to Opening Statement or Closing Argument

No objections shall be raised during opening statements or during closing arguments. If a team believes that an objection would have been proper during the opposing team's opening statement or closing argument, the team member presenting the same segment of the trial may, following the opening statement or closing argument, stand to be recognized by the presiding judge and once recognized, state, "If I had been permitted to object during the [opening statement/closing argument] I would have objected to _____." The presiding judge will not rule on this "objection." The presiding judge and scoring panelists will weigh the "objection" individually. No rebuttal by the opposing team will be heard.

7.3 Exhibits

Exhibits can be admitted into evidence only when a sequence of proper procedural steps has been followed. These steps are part of a litany that should be smoothly and efficiently demonstrated by the attorney for each exhibit admitted. All evidence is pre-marked as exhibits.

The following are offered as examples.

a. Show the exhibit to opposing counsel or offer them a copy of the exhibit. "Your Honor, let the record reflect that I (am showing/have given) opposing counsel a copy of what has been marked as Exhibit A."
b. Obtain permission of the presiding judge to approach the witness. "Your honor, may I approach the witness."
c. Show the exhibit to the witness. "Your Honor, let the record reflect I am showing the witness a copy of Exhibit A."
d. Lay the proper foundation for the exhibit.
e. Move for admission of the exhibit into evidence. "Your Honor, at this time I move for the admission of Exhibit A."
f. Obtain permission of the presiding judge to publish the exhibit to the jury. "Your Honor, permission to publish Exhibit A to the jury."
g. Publish the exhibit.

8. Violations of the Rules

8.1 Violations of the Rules Inside the Bar

The presiding judge may rule on objections to violations of the Rules of Competition when made during trial, or may reserve ruling until the conclusion of the trial.

8.1.1 Reporting an Inside the Bar Dispute

If a team believes that a substantive violation of the Rules of Competition has occurred and that it was not resolved in trial, the team may complete—without the assistance or participation of attorney coaches or any other non-team members—the "Team Dispute Form" for an "Inside the Bar" dispute, and file it with the presiding judge immediately following the conclusion of that trial round.

At no time in this process may team sponsors, coaches, or non-participating team members communicate or consult with the team.

All forms are on the program website at www.coloradohighschoolmocktrial.com

8.1.2 Dispute Resolution Procedure for an Inside the Bar Dispute

The presiding judge will review the completed Inside the Bar Dispute form and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record his/her reasons on the Form, announce her/his decision to the court, retire to complete his/her score sheet (if applicable), and turn the dispute form in to the Regional or State Tournament Coordinator.

If the judge concludes that the grounds for the dispute merit a hearing, the Form will be shown to opposing counsel for its 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 five minutes) to prepare their arguments, the judge will conduct a hearing on the dispute, allotting each team's spokesperson three minutes for a presentation. The spokespersons may be questioned by the judge. At no time in this process may teacher or attorney coaches communicate or consult with the team. After the hearing, the presiding judge will enter her/his ruling on the dispute on the dispute form. The presiding judge may take a recess to consult with the Regional or State Tournament Coordinator and/or CBA Mock Trial Committee members.

If the presiding judge determines that a substantial rules violation has occurred, any penalty will be assessed solely by the Regional or State Tournament Coordinator and CBA Mock Trial Committee members. The scoring panelists will not consider the dispute in their scoring decisions.

8.2 Violations of the Code of Ethics and Rules of Competition Outside the Bar

If a team or school believes that a substantial violation of the Rules has occurred outside the bar, a student, teacher or attorney coach must complete the designated "Team Dispute Form" for an Outside the Bar dispute with the nature and details of the violation, and submit the completed form to the Regional or State Tournament Coordinator. All forms are on the program website at www.coloradohighschoolmocktrial.com

When an allegation of a substantive violation of the Rules of Competition comes to the attention of a Regional Coordinator or the State Coordinator, that Coordinator and the CBA Mock Trial Committee will designate a dispute resolution panel. The panel will (a) notify all pertinent parties of the dispute; (b) allow time for a response, if appropriate; (c) conduct a hearing, if needed; (d) rule on the allegation; and (e) assess a penalty, if appropriate.

8.3 Sanctions for Violations

The CBA Mock Trial Committee, and on behalf of the Committee, the State Coordinator, may impose sanctions on a school, team, coach, student or other individual for misconduct or violation of the Code of Ethics or the Rules of Competition occurring while a school, team or individual is present in a mock trial activity, including practices, intra-school scrimmages, inter-school scrimmages, and regional and state tournaments. Sanctions may include: forfeiture of tournament standing; forfeiture of points, a ballot or ballots, or a round of competition; forfeiture of individual awards; disqualification of a school or team from a tourney; disqualification of a school or team from future tourneys; exclusion from mock trial activities of any individual, including a student, coach, supporter, or observer that is not associated with any team or school; and fines for property damage and littering.

Regional Mock Trial Committees, and on behalf of those committees, the Regional Coordinators, may impose sanctions for misconduct at the regional tournaments, including: forfeiture of tournament standing; forfeiture of points, a ballot or ballots, or a round of competition; forfeiture of individual awards; disqualification of a school or team from a tourney; exclusion from mock trial

activities of any individual, including a student, coach, or supporter, or an observer that is not associated with any team or school; and fines for property damage and littering. Before any sanction is imposed, notice and opportunity to be heard shall be afforded to the alleged offending person(s) and the attorney-coach of the team affiliated with such person(s).

The decisions and sanctions will be communicated to the schools, teams, and individuals as soon as possible after the sanction is imposed.

9. Judging and Team Advancement

9.1 Scoring Process

The scoring sheets must be completed prior to the beginning of any student performance critique. Scoring panelists should use the attached scoring criteria during the mock trial to determine the performance level of each student as attorney or witness. This scoring criteria outline will be provided to each scoring panelist as a reference during the adjudication of the mock trial.

The score sheets are to be completed individually by each scoring panelist.

The scoring panelists will score participants on a scale of 1-10, according to the performance of their roles during the trial. The panelists will also award a total of up to three professionalism points, to be divided between the two teams. . The panelists total the individual performance scores and shall place the sum in the "totals box." The team that earned the highest point value on the individual judge's score sheet is the winner of that judge's ballot. The scoring panelists shall then circle the team (Prosecution/Plaintiff or Defense) with the highest total points. The team that receives the majority of the three ballots wins the round.

In the event of a scoring panelist having the same total team performance point scores for both teams, the scoring panelists shall circle the team's role (Prosecution/Plaintiff or Defense) that he/she deems the trial round winner of his/her ballot.

In the event of a mathematical error in tabulation by a scoring panelist that, when corrected, changes the results of the team with the highest point total, such correction will be made by the State Tournament Coordinator or CBA Mock Trial Committee member or by the Regional Tournament Coordinator, if such an error occurs at the regional tournament.

9.2 Scoring Guidelines

9.2.1 Score Only Student Skills in Presenting and Trying the Case

The responsibility of the scoring panelists is to score the students' skills in each element of the trial round, *not the merits of the facts and law as written in the case materials.* In other words, to determine the winning team the scoring panelists are scoring the individual skills and talents of each of the students as attorneys and witnesses, and their ability as a team to present a coherent and consistent case.

9.2.2 Team Role Assignments

Teams have options concerning attorney/witness role assignment, order of calling witnesses, and selecting who presents opening and closing arguments. Scoring panelists are not to pass judgment or impact a point score on how teams make assignments.

In the event that a team is missing one of its participating team members in a trial round, the panelists shall give the missing participating team a "0" point score for each performance part he/she misses in that trial round and make a notation in the remarks section of the ballot. Additionally, the panelists shall score the opposing team member(s) impacted by the missing person with "10" points for each performance in that trial round impacted and make a notation in the remarks section of the ballot. This rule applies in the event another participating team member stands in for the missing member. A non-participating member may fill in for the missing participating member with no penalty. Examples:

9.2.2.1 Missing witness: A team does not have one of its three witnesses during a round. If a witness role is not performed, both the witness role and the attorney who would have conducted the direct-examination of the witness will receive "0" point scores. Additionally, the opposing attorney who would have cross-examined the witness will receive a "10" point score.

9.2.2.2 Witness substituted by a participating team member: A team does not have one of its witnesses, and a participating team member steps into a second role. If a participating team member steps into that role, that role portrayal will be scored with "0" points. The attorney from the opposing

team who conducted the cross-examination of the substitute participating team member will be scored “10” points.

9.2.2.3 Witness substituted by non-participating team member: A team does not have one of its witnesses and a non-participating team member fills the role. If a non-participating team member steps into a witness role, points for all students impacted will be scored as they are earned. No penalties will be assessed.

9.2.2.4 Missing attorney: A team does not have one of its attorneys during a round. If an attorney does not conduct a direct examination of a witness, both that attorney role and the witness he/she was to direct will receive “0” point scores. Additionally, the opposing attorney who would have cross-examined the witness will receive a “10” point score.

9.2.2.5 Missing or changed cross examiner: If the attorney assigned a witness’s cross examination on the trial roster does not conduct that cross-examination, that attorney will receive a “0” point score. The opposing team’s witness and the attorney who conducted the direct-examination will both receive “10” point scores.

9.2.2.6 Attorney substituted by a participating team member: A team does not have one of its attorneys during a round, and a participating team member steps into a second role (i.e., doubles). If a participating team member steps into an attorney role, that team member shall receive a “0” point score for both the direct examination and the cross-examination impacted by the substitution. The opposing team’s witness who is being cross-examined and impacted by the substitution will receive a “10” point score.

9.2.2.7 Attorney substituted by non-participating team member: A team does not have one of its attorneys during a round, and a non-participating team member fills the role. If a non-participating team member fills into an attorney role, points for all students impacted will be scored as they are earned. No penalties will be assessed.

9.3 Judge’s and Panelists’ Critique

The Judges and scoring panelists are allowed 12 minutes total for debriefing. The timekeepers will monitor each critique, and will signal each scoring panelist with one minute remaining, and at three minutes. The scoring panelists shall not inform the students of individual performance scores, total team points earned, or ballot decisions. Scoring panelists shall be reminded during their orientation

by tournament coordinators of the need to be sensitive to student diversity and age when making their remarks.

9.4 Team Advancement

9.4.1 Team Rankings

The teams will be ranked at the end of each round based on the following criteria in the order listed:

a. Win/loss record
b. Schedule strength
c. Total number of ballots
d. Total number of points spread between a team and their opponents
e. Total number of points accumulated by the team

9.4.2 Team Matching

The teams will be matched randomly in the first round of competition, with the exceptions that at the State Tournament,

- Teams that won their regional tournaments will not be matched against each other; and
- Two teams from the same region will not be paired against each other.

After the first round, teams will be ranked based on their win/loss record, schedule strength, total ballots, total point differential and total points, in that order.

- At regional tournaments, the highest ranked team will be matched against the second highest ranked team, the third highest ranked team will be matched against the fourth highest ranked team, and so on.

- At the State Tournament, in order to increase the chances of the best two teams meeting for the first time in the Championship Round, teams will be grouped by their win/loss records, and the highest ranked team in each group will be matched against the lowest ranked team in that same group, the second highest ranked team in the group will be matched with the second lowest ranked team in the group, and so on.

The resulting match-ups will be adjusted to preclude repeat matches.

In all tournaments, for the second round only, match-ups will also be adjusted so that teams do not present the same side of the case they presented in the first round. Adjusting the matches this way results in fairer scoring because both sides of each team, i.e., plaintiff/prosecution and defense, are scored for each team. Further, it ensures that that family and friends have a day to observe and support their respective students.

In all tournaments, for the fourth round, if possible, teams will be matched such that they present the opposite side of the case they presented in the third round. However, this may not be possible in all cases, *and teams may have to present the same side of the case as they presented in the third round.* In this fourth round, it is essential that the matches result in the fairest determination of the teams to advance to the State Tournament or to the State Championship round. Accordingly, fourth round matches will not be adjusted to ensure that each team presents each side of its case twice during a tournament.

Further adjustments to the matches may be made to accommodate an odd number of teams in a tournament, or for other reasons, at the discretion of the State Tournament Coordinator or the CBA Mock Trial Committee.

9.4.3 Bye Round Assignments

A "bye" becomes necessary when an odd number of teams are present for any given round of the tournament. It is the intent of the CBA Mock Trial Committee to avoid "bye" round assignments where possible. However, in the event of a circumstance resulting in an odd number of competing teams, the following procedure will be followed:

a. The tournament director will have discretion to assign teams to "bye" rounds in a manner that the tournament director believes to be the most fair or most likely to avoid influencing the outcome of the tournament. The team drawing the "bye" in each round will receive a win and three ballots for that round. For the purpose of power matching, in the first round, the team will receive the average of the point differential and total points earned by the top 50% of teams. For all subsequent rounds, the team will receive

the average of its point spread and points earned in its preceding trials.

b. The tournament director may, instead, choose to use a ghost team. If a ghost team is used, it will compete and be scored in the tournament in the same manner as all of the other teams. After the fourth round, however, the ghost team will be ranked in last place regardless of where it otherwise would have ranked.

9.4.4 Schedule strength rating

Team ranking and matching based only upon margins of victory can unfairly reward weaker teams when a Swiss matching system is used to rank or match teams that have at least one loss, unless schedule strength is also considered. Accordingly, a rating based upon schedule strength is included for the second ranking criteria.

The schedule strength rating for a particular team is computed by adding two values. Add:

1) the number of wins achieved by the opponent with the most wins out of all the opponents the team has defeated, to
2) the number of wins achieved by the opponent with the fewest wins out of all of the opponents that defeated the team.

If under 1) the defeated teams are winless, zero is used for the first value. For opponent teams that are undefeated, the maximum number of possible wins is used for the second value.

9.5 Championship Round

At the end of four rounds of competition, the top two teams will compete in the championship round. The following procedure will be followed to determine which team will represent which side of the case for the championship round:

a) The team with the letter/numerical code that comes first alphabetically/numerically will be considered the “designated team.”
b) A coin will be tossed and allowed to drop on the floor unimpeded by the State Tournament Coordinator or designee.
c) If the coin lands heads up, the designated team will represent the Plaintiff/Prosecution. If the coin lands tails up, the designated team will represent the Defense.

The championship round may have a larger scoring panel than described in Rule 4.1. Teams participating in the state tournament need to plan on having an additional seven copies of all round materials for this round. If the tournament schedule allows, both teams will have approximately thirty minutes from the coin toss to regroup and prepare for the championship round. When possible and if resources are available, teams will each be provided a private area to confer prior to the round. Teams will be advised as to their report time to the Championship Round Courtroom.

CRITERIA FOR SCORING

The responsibility of the scoring panelists is to score the students' skills in each element of the trial round, *not the merits of the facts and law as written in the case materials.* In other words, the scoring panelists are scoring the individual skills and talents of each of the students as attorneys and witnesses, and their ability as a team to present a coherent and consistent case, to determine the winning team.

Scoring Opening Statements

- The theory of the case and the case strategy are clear: provides a clear and concise description of their team's side of the case, including the burden of proof
- Includes key witnesses
- States the outcome sought
- Captures and holds jurors' attention
- Uses time effectively
- Presentation is non-argumentative
- Does not use notes

Scoring Direct Examinations By Student Attorneys

- Properly phrased open-ended questions: e.g., who, what, why, when, where, how
- Uses proper courtroom procedure
- Demonstrates understanding of facts, law and procedure
- The examination furthers the examining attorney's theory of the case
- Handles objections appropriately and effectively, and did not overuse objections
- Does not ask questions that call for unfair extrapolation
- Demonstrates understanding of the Rules of Evidence
- Demonstrates ethical behavior, professionalism, and good sportsmanship.
- Handles exhibits appropriately and effectively
- Does not use notes

Scoring Cross Examinations By Student Attorneys

- Properly phrased questions - leading
- Effective questioning that furthers the cross-examining attorney's theory of the case
- Proper impeachment
- Handles objections appropriately and effectively
- Does not overuse objections
- Does not ask questions that call for unfair extrapolation
- Uses appropriate techniques to handle a non-responsive witness, as necessary
- Demonstrates understanding of the Rules of Evidence
- Demonstrates ethical behavior, professionalism, and good sportsmanship.
- Handled exhibits appropriately and effectively
- Does not use notes

Scoring Witnesses

- Gives responsive, factually accurate answers that show the benefits of active listening skills and extemporaneous responses
- Credible, believable
- Does not introduce material new facts to case. Does not unfairly extrapolate. Scoring panels will be briefed that the preferred response to unfair extrapolation is impeachment, and to not deduct point for unfair extrapolation on their own—i.e., in the absence of an unfair extrapolation objection—unless they are convinced that they know the facts of the case better than the students trying the case.
- Demonstrates understanding of the facts of the case, and the theory of the case, going beyond the witness's own statement as appropriate
- Credible portrayal of the character
- Poised and maintains appropriate courtroom decorum consistent with the character's role
- Does not give unnecessarily long and/or non-responsive answers on cross examination: does not filibuster in an effort to use the cross-examiner's time unfairly.

Closing Argument

- Case theory and strategy continued in closing argument
- Summarizes the evidence. Does not refer to evidence that was not submitted.
- Emphasizes the supporting points of their own case and weaknesses of the opponent's case
- Concentrates on the vital, not the trivial
- Applies the applicable law
- Discusses burden of proof
- Overall, the closing argument is persuasive
- Captures and holds jurors attention
- Uses time effectively

Professionalism Points

- In trying the case, team members will be courteous and professional, observe general courtroom decorum; speak distinctly and clearly; and have l knowledge of the law and trial procedures.
- Points should not be awarded to teams that behave in a contentious or unprofessional manner.
- Award 0-3 points in TOTAL TO BOTH TEAMS, but no more than 3 points TOTAL between the two teams.
- No fractions or decimal points please. Example P= 1 point and D=2 points

Performance Ratings

- Individual participants will be rated on a scale of **1-10** points, according to their role(s) in the trial, as indicated in the Chart below.
- Scoring panelists may individually consider penalties for violation(s) of the Rules of the Competition.
- Penalties and/or a lack of professionalism will reduce point awards in the appropriate performance categories below.
- Penalties and/or a lack of professionalism will not be indicated separately on the official score sheet.
- Scoring panelists may NOT assign FRACTIONS in any scoring category.
- The team with the highest number of total points on a score sheet wins that score sheet (ballot).
- The team winning the majority of score sheets per trial wins that trial.
- Scoring Panelists need to fill out their nomination forms for outstanding attorney or outstanding witness. The appropriate form should be completed and signed by the each member of the scoring panel and returned to the trial coordinator/courtroom monitor with score sheets.

POINTS	PERFORMANCE	CRITERIA FOR EVALUATING STUDENT PERFORMANCE
1-2	**Not Effective**	Unsure of self, illogical, uninformed, not prepared, speaks incoherently, definitely ineffective in communication.
3-4	**Fair**	*Minimally* informed and prepared. Performance is *passable*, but lacks depth in terms of knowledge of task and materials. Communication lacks clarity and conviction.
5-6	**Good**	Good, solid, but less than spectacular performance. Can perform outside the script but with less confidence than when using script. Logic and organization are adequate, but not outstanding. Grasps major aspects of the case, but does not convey mastery of it. Communications are clear and understandable, but could be stronger in fluency and persuasiveness.
7-8	**Excellent**	Fluent, persuasive, clear and understandable. Organizes materials and thoughts well and exhibits mastery of the case and materials.
9-10	**Outstanding**	Outstanding demonstration of those qualities listed for 7-8 points. Additionally, thinks well on feet, is logical, and keeps poise under duress. Can sort essential from nonessential and use time effectively to accomplish major objectives. Demonstrates the ability to utilize resources to emphasize vital points of the trial.

Scoring Panelists: Remember To Edit Your Score Sheet Closely To:

- **Total all scores**
- **Check for blanks**
- **Check all totals closely**
- **Print your name and sign the Official Score Sheet**
- **Return your Score Sheet to the courtroom monitor assigned to your courtroom.**

Judges' Orientation

First of all, thank you for volunteering. The program would not be as effective, or as efficient, without you. On behalf of the CBA, The Mock Trial Committee, Mock Trial participants, coaches, families and supporters, a heartfelt ***Thank You***.

1. Pre-trial issues:
    a. PANELISTS CONFLICTS:
        i. If the scoring panelists if they see anyone with whom they would have a conflict that might cause bias, ask if they feel the need to conflict out or if both teams are comfortable with panelist. If a team objects, ask courtroom monitor to notify coordinator. HAVE VOLUNTEER REMAIN IN COURTROOM.
        ii. Prior to starting preliminary trial matters, please wait for OKAY from State Coordinator via Courtroom Monitor
        iii. Please be aware that the State Coordinator may need to interrupt proceeding to deal with issues; will ask to approach the bench to discuss issues.
    b. No motions allowed in pre-trial, except regarding admissions of stipulations.
    c. Teams may request to stray from the podium – encouraged to grant permission because it lends to performance
    d. Oaths:
        i. Please be sure to administer gallery, volunteer and team oaths.
        ii. Witness oaths: Our recommendation (in the interest of a speedy trial round) is to swear in all witnesses at the same time at the beginning of the round.
    e. Videotaping/Audiotaping/Photography
        i. Allowed from gallery if unobtrusive – video/photography – and with permission of BOTH teams
        ii. CBA will take photos and move inside the Bar to do so
    f. TIMEKEEPING:
        i. One timekeeper per team that's NOT an attorney or teacher coach; Timekeepers go in jury box with panelists – sit IN FRONT of panelists
        ii. Time does not stop for introduction of exhibits; time stops for objections and response exchanges, then restarts after ruling with attorney's question or witness's answer
        iii. Timekeepers should not coach from their positions
        iv. Timekeepers should be synchronized and work together.
        v. Coaches don't keep official times for the teams – Team Timekeeper is official.
    g. TEAM IDENTITIES SECRET – teams use Identifier codes – please ask gallery members who have team paraphernalia to leave the courtroom and/or to remove their identifying clothing.
    h. No one allowed in Jury boxes except timekeepers and panelists/courtroom monitor
2. Trial Issues:
    a. Exhibits are not necessarily authentic. Unless an exhibit is stipulated to be authentic, students should lay the appropriate foundation for the admissibility of the exhibit, including authenticity. Exhibits are not necessarily admissible.
    b. Objections: Keep it moving (Round should last approx. 2 hours)
        i. Students will state objection;
        ii. Ask opposing counsel for response

iii. Ask objecting counsel for rebuttal and a response if warranted by rebuttal. Allows student attorneys to demonstrate knowledge so please allow responses
iv. Advise why not overruling or sustaining; Overrule with the suggestion to take it up on Cross, Re-Direct, etc.
v. Keep teams from objecting just to object; objecting constantly (delays rounds) is a tactic.
vi. Presiding judges MUST NOT attempt to teach during a trial. Please do not assist team members by suggesting they raise a more appropriate objection or use a more appropriate rules citation or ask a more appropriate question on direct or cross, etc. At the same time please do not say you will not "be accepting objections to speed the trial on".

c. Unfair Extrapolation: If, during direct examination, a witness testifies to a fact or opinion that is not in the Case Problem, and the fact or opinion is material (as defined in Rule 6.5.2, above), the opposing attorney may object to the unfair extrapolation.
   i. When an unfair extrapolation objection is made, the attorney conducting the examination may:
      1. withdraw the challenged testimony or question,
      2. concede the objection,
      3. establish that the challenged information is in the case problem, or
      4. establish that the challenged information is not material.
   ii. Argument on the objection is to be made in open court. It is within the sole discretion of the presiding judge how much time will be permitted for such argument. The resolution of any unfair extrapolation objection rests solely with the scoring panelists, in accordance with this language that the presiding judge may read to the scoring panelists:

You, the scoring panelists, are the sole arbiters of this dispute. Based upon your own individual observations, good faith judgment, and consistent with the intent of this judicial process, you may decide that:

(a) There was no extrapolation; or
(b) The statement was not unfair extrapolation (or the question did not ask for unfair extrapolation) as it was not material; or
(c) The statement was unfair extrapolation (or the question was asking for unfair extrapolation) as it was material.

The ultimate decision is in the discretion of each of you individual scoring panelists. Consistently with your decision, you may award one or more points, deduct one or more points, or take no action at all with respect to any of the parties involved. If you determine that there was no unfair extrapolation (or that there was no question asking for unfair extrapolation) you may deduct one or more points from the objecting party if you believe that the objection was not made in good faith, was improvident, or was poor sportsmanship. Your decision is final.

d. Expert witnesses need to be qualified before allowed to offer opinion testimony, but do not disqualify expert witnesses.
e. No props or costumes
f. NO outside case law allowed in case
g. NO bench conferences or recesses (the latter excepted in medical emergency).
h. Watch for intentional rambling/difficult witness ploys – teams may use to eat cross exam time
i. Disputes – There are two kinds of objections to violations of the Rules of Competition: INSIDE the bar and OUTSIDE the bar. Refer to Rule of Competition 7.1.
    i. The presiding judge will rule on inside the bar objections—when the objection is made during trial in accordance with Rule of Competition 7.1.p.—or at the conclusion of the trial, at the judge's discretion. Allegations of rule violations that occur inside the bar that were not successfully resolved during the trial must be filed with the presiding judge by a team—without the participation or assistance of coaches or any other non-team-members—immediately following the conclusion of that trial round.
    ii. Allegations of rule violations that occur outside the bar must be brought to the attention of the State Tournament Coordinator or a CBA Mock Trial Committee member by the team's Teacher or Attorney coach as soon as possible, but no later than 48 hours after the tournament, or within 48 hours of the time the team knew or should have known that rules violation occurred. Any disputes received after this time will not be considered.
j. IMPORTANT: DISALLOW contentiousness or rudeness of attorneys towards witnesses and vice versa. If this is evident, please warn and remind student attorneys to modify behavior. Panelists are being told to not reward, but rather penalize, such behavior.
k. We have students with strong English accents, please mind teams asking to "repeat" as a technique

3. Post trial issues:
    a. SCORE SHEETS: Scoring panelists need to complete and turn in score sheets FIRST; THEN after-chats may begin
    b. AFTER CHATS:
        i. Start ONLY after score sheets have been turned over to Courtroom Monitor.
        ii. Keep after-chats brief – 1-2 minutes or less per panelist; ask timekeepers to keep time if you'd like to encourage panelists to share what they liked about performances
        iii. Critiques should focus on **performance** and **NOT THE MERITS** of the case as written.
        iv. Do not comment on accents or clothing
        v. NO AFTER CHATS FOR FOURTH ROUND

Scoring Panelists' Orientation

First of all, thank you for volunteering. The program would not be as effective without you. On behalf of the CBA, The Mock Trial Committee, Mock Trial participants, coaches, families and supporters, a heartfelt ***Thank You***.

I. PURPOSE – Goals of the Program
   a. Enhance understanding of—and appreciation for—the American judicial system;
   b. Build and improve life skills, including critical thinking, persuasive argument and advocacy, public speaking, and teamwork;
   c. Increase cooperation and communication between our legal and educational communities to further the missions of each;
   d. Heighten awareness of current social and legal issues;
   e. Provide an educational opportunity for students of diverse abilities, backgrounds, and interests;
   f. And have fun doing it.

II. Remember:
   a. This is an extracurricular activity for these students, many teams started preparing for this competition in October. Most students participate because they want to learn all of the skills associate with preparing for, organizing, analyzing, and presenting their case before you.
   b. One of the primary goals of this competition is to identify the best team in Colorado that will have the best opportunity to win top place at the National competition
   c. We would like to remind you that the MT competition is vastly different from a Speech and Debate tournament. In speech and debate tournaments, oratory skills and presentation are primary scoring factors. In MT competition good oratory skills are certainly necessary and a component for scoring. However, we ask that you place an emphasis on providing teams that demonstrate, in addition to good oratory skills, that they have learned how to present their evidence in a strategic, reasoned, organized, logical, understandable and persuasive manner and that they have demonstrated to you that they have a firm understanding of the rules of evidence and the rules of trial procedure.

III. Mock Trial v. REAL WORLD
   a. No pre-trial motions
   b. No *voir dire,* except for an expert witness. Note that judges will not disqualify experts or otherwise limit their testimony. If an expert is not properly qualified, take it into account in the scoring.
   c. NO VERDICT – we're not adjudicating how good their strategy was, but rather how WELL they performed their strategy.
   d. Trial elements are TIMED: watch for, and deduct points for, tactical efforts to burn opposing team's time.

e. Each witness is bound by the facts contained in his/her own statement/affidavit, the Stipulated Facts and the exhibits, but not by facts in the statement/affidavit of others.
f. Any unfair extrapolation is preferably handled through impeachment. Do not deduct points for unfair extrapolation on your own—i.e., in the absence of an unfair extrapolation objection—***unless you are certain that you know the facts of the case better than the students.***
g. Stipulations may not be disputed at trial.

IV. Scoring

a. The MT Committee emphasizes to all Mock Trial Teams that students are expected to present their case to you in the same manner as an actual attorney would. In other words, the students are expected to: have a cogent case strategy present facts and witnesses in a concise, understandable and logical manner and make arguments using only facts that were presented at trial.
b. Scores demonstrate skill and talent – NOT the merits of the facts and law of the case as written.
    - While we ask that you evaluate the student's performance and presentation as if they are real attorneys, we also ask that you not judge any student or team based on the merits of the case. In other words, we ask that you not give one team higher points simply because you believe that, if this was an actual trial, a team would win the trial based solely on the strength of the facts and law of the case, and not on the skills of the students.
    - Higher scores reflect: skill; talent; knowledge of the case, the law, and procedure; extemporaneous response to the opposing side; trying the case without the benefit of notes; effective advocacy, persuasiveness, and energy, passion, and characterization.
    - Panelists should not adjust their score (in either direction) in the event they score a round where a female student is playing the defendant as a male or as a female.
c. Score Sheets
    - Circle which round you're scoring
    - Note Team Codes (on Trial Rosters) in CORRECT places – P v. D
    - MUST circle ballot vote of which team wins – team with highest points
    - MUST sign your score sheet
    - MUST calculate at end of round BEFORE After-Chats – addition will be double-checked – please complete and handover to Courtroom Monitors ASAP. Need to keep rounds moving
    - Your Score Sheets will be picked up BEFORE after CHATs, so if you need to take notes do it on something other than the score sheet
    - And your math will be checked in the backroom – don't stress. But please circle winner!
d. DON'T FORGET TO FILL OUT A BEST ATTORNEY/BEST WITNESS FORM!!

e. Recommendations on Scoring
    - Use of notes is not prohibited, and is not penalized if used to quote or as reminders. Use as a crutch in openings, closing, and examinations isn't good.
    - Scores shouldn't be excessively harsh or lenient – an average performance is about a 5
    - Scores need to be consistent – but all 10's or 4's are not helpful.
    - We encourage Mock Trial Teams to make objections during trial only to violations of the rules of procedure or the rules of evidence. If a team believes that a violation of the MT Rules of Competition has occurred, the team may object in court and the judge may rule. In addition, the MT Committee has provided teams with a procedure to file written objections at the end of trial. IN ANY EVENT, your scores should not take into effect whether or not there were any MT rule violations, as that determination will be made by the presiding judge, the Tournament Coordinator and the MT Committee. Any sanction is reserved to the Tournament Coordinator and the MT Committee.
    - Teams are not allowed to raise objections during opening statements or closing arguments. Teams are allowed to object after the opening or closing.
    - DO NOT REWARD, BUT PENALIZE, RUDE AND CONTENTIOUS BEHAVIOR OF STUDENT ATTORNEYS AND OR WITNESSES during cross examination! We are not teaching students to be combative! Note the tone of voice, attitude, demeanor, their frustration, and similar issues.

f. Unfair Extrapolations
    - Any unfair extrapolation is preferably handled through cross examination and impeachment. Do not deduct points for unfair extrapolation on your own—i.e., in the absence of an unfair extrapolation objection—***unless you are certain that you know the facts of the case better than the students.***
    - The unfair extrapolation objection is intended to be used only for egregious violations. Accordingly, the scoring panelists may not only deduct points for unfair extrapolation, but may also deduct points from the objecting team if they conclude that the objection was not made in good faith, was improvident, or demonstrated poor sportsmanship.
    - If, during direct examination, a witness testifies to a fact or opinion that is not in the Case Problem, and the fact or opinion is material (as defined in Rule 6.5.2, above), the opposing attorney may object to the unfair extrapolation. The judge will then follow a prescribed procedure in addressing the issue and instructing you, the scoring panelists.

g. After Chats – 3 minutes or less for all volunteers
    - Should focus on PERFORMANCE and NOT THE MERITS or strategy of their case – that's set!
    - Be kind but honest – offer comments about what you liked about their performance – this is EDUCATIONAL.
    - REMEMBER – students are from variety of backgrounds – ethnic, socio-economic, religious, etc. Be mindful of this with comments
    - LIMIT REMARKS! No war-stories please – fun to tell but generally not conducive to education.
    - Important, many of the schools cannot afford new clothes for this tournament and have borrowed clothes; DO NOT COMMENT ON A STUDENTS CLOTHES OR ACCENTS
h. Other things:
    - Panelists should not adjust their score (in either direction) in the event a student of one gender is playing a witness of the opposite gender.
    - Videotaping/Photography - If teams seem distracted by photography/media, take that into consideration and do not reflect negatively.
    - Conflicts of Interest – you may know a coach, student, etc. If you feel uncomfortable scoring a team, OR if team is uncomfortable with you scoring them, you may need to switch panels. BUT remember a true conflict is one that would create bias, or would appear to create a bias based on the perceptions of a reasonable person. Simply knowing another attorney, etc. is not a conflict.
    - Seating – please sit in the Jury Box – in BACK ROW. Timekeepers sit in front of you so not to see score sheets
    - Timekeepers – should sit in front of panelists in front row of jury box; official timekeepers of the trial (not coaches in gallery); should not coach team from seat – ground for disqualification
    - Time not reserved for rebuttal (by prosecution) prior to closing is LOST
    - Timekeepers should call stop if their student team member goes beyond their time. If there are errors, take it into account in the award of professionalism points.

TRIAL ROSTER – PLAINTIFF/PROSECUTION

Trial Roster forms are completed and duplicated by each team prior to each round, and are to be presented to the presiding judge, the three or four scoring panelists, and opposing counsel at the start of the round. Your team must be identified ONLY by team code. **List attorneys and witnesses in the order of appearance on direct.**

Team Code: _____

Round (circle one): 1 2 3 4 Championship Round

	Direct Student Attorney	Plaintiff Character	Student Witness Name	M/F
Opening				
Witness 1				
Witness 2				
Witness 3				
Closing				

Cross Student Attorney	Defense Character

Timer	

Team Member(s) Not Participating in this round

TRIAL ROSTER – DEFENSE

Trial Roster forms are completed and duplicated by each team prior to each round, and are to be presented to the presiding judge, the three or four scoring panelists, and opposing counsel at the start of the round. Your team must be identified ONLY by team code. List attorneys and witnesses in the order of appearance on direct.

Team Code: _____

Round (circle one): 1 2 3 4 Championship Round

	Direct Student Attorney	Defense Character	Student Witness Name	M/F
Opening				
Witness 1				
Witness 2				
Witness 3				
Closing				

Cross Student Attorney	Plaintiff Character

Timer	

Team Member(s) Not Participating in this round

Colorado Mock Trial Rules of Evidence

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Colorado Mock Trial Rules of Evidence

In American trials, complex rules are used to govern the admission of proof, *i.e*., oral or physical evidence. These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a Rule of Evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence probably will be allowed by the judge. The burden is on the mock trial team to know the Mock Trial Rules of Evidence and to be able to use them to protect the client and fairly limit the actions of opposing counsel and its 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.

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 Mock Trial Rules of Evidence govern the competition.

Article I. General Provisions

Rule 101. Scope

These Mock Trial Rules of Evidence govern the trial proceedings of the local and state tournaments in Colorado.

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.

Rule 104. Preliminary Questions

(a) **In General.** The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege. The court's determination will be based upon a preponderance of the evidence standard in both civil and criminal cases.

(b) **Relevance That Depends on a Fact.** When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

(c) **Conducting of a Hearing on Preliminary Matters.** Discussions regarding preliminary matters will be held in open court for educational and scoring purposes, but shall be considered to have been held outside the hearing of the jury.

(e) **Evidence Relevant to Weight and Credibility.** This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

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 x 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 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 physician or 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.

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 and opinion- and give the reason 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.

(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

Rule 901. Authenticating or Identifying Evidence

(a) **In General.** To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) **Examples.** The following are examples only--not a complete list--of evidence that satisfies the requirement:

(1) **Testimony of a Witness with Knowledge.** Testimony that an item is what it is claimed to be.

(2) **Nonexpert Opinion About Handwriting.** A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

(3) **Comparison by an Expert Witness or the Trier of Fact.** A comparison with an authenticated specimen by an expert witness or the trier of fact.

(4) **Distinctive Characteristics and the Like.** The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

(5) **Opinion About a Voice.** An opinion identifying a person's voice--whether heard firsthand or through mechanical or electronic transmission or recording--based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

(6) **Evidence About a Telephone Conversation.** For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

(7) **Evidence About Public Records.** Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

(8) **Evidence About Ancient Documents or Data Compilations.** For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 20 years old when offered.

(9) **Evidence About a Process or System.** Evidence describing a process or system and showing that it produces an accurate result.

Article X. Contents of Writings, Recordings, and Photographs

Rule 1001. Definitions That Apply to This Article

In this article:

(a) A "writing" consists of letters, words, numbers, or their equivalent set down in any form.

(b) A "recording" consists of letters, words, numbers, or their equivalent recorded in any manner.

(c) A "photograph" means a photographic image or its equivalent stored in any form.

(d) An "original" of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, "original" means any printout--or other output readable by sight--if it accurately reflects the information. An "original" of a photograph includes the negative or a print from it.

(e) A "duplicate" means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

Rule 1002. Requirement of the Original

An original writing, recording, or photograph is required in order to prove its content regardless of whether the writing, recording, or photograph was provided in the case materials.

Rule 1003. Admissibility of Duplicates

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

Rule 1004. Admissibility of Other Evidence of Content

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

(a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;

(c) the party against whom the original would be offered had control of the original; or

(d) the writing, recording, or photograph is not closely related to a controlling issue.

Rule 1006. Summaries to Prove Content

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court.

Rule 1007. Testimony or Statement of a Party to Prove Content

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.