

**ARKANSAS BAR ASSOCIATION
MOCK TRIAL RULES**

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Introduction

The Arkansas Mock Trial Competition is an educational activity designed to promote a better understanding of the legal process and to encourage the development of analytical and communicative skills. Although some students who participate may have chosen or will choose to pursue a career in the law, our objectives include all of the following:

- To recognize the vital importance of the U.S. Constitution and its vital relationship to our state constitution.
- To further an understanding of the law, court procedures and our legal system.
- To promote better communication and cooperation among legal professionals, educators, students, and community participants.
- To increase the understanding of the dynamic nature of constitutional liberties for teacher and student participants, as well as for the friends, parents, and community members who will attend competition.
- To increase students' proficiency in basic life skills such as listening, speaking, reading, and reasoning.
- To motivate and recognize students' academic and intellectual achievements.
- To heighten career consciousness of law-related professionals.

The competition is, first and foremost, an exposure to the functions of our legal system. It is also an exercise in communication and the art of advocacy, which is based on our adversary system of justice. This system is based on the belief that the court will be better able to make a well-informed decision by hearing a vigorous and zealous presentation of each side of the case.

The competition is not a speech or debate tournament, and it is not a dramatic presentation, although some lawyers use elements of all three in their style. First, understand the mechanics of trial and the function of each part. Then try to blend the parts into an overall presentation that effectively conveys your position. Style, voice, diction, and the like are all valuable tools—but their merit is lost unless the Court understands your overall message and is persuaded to agree with you. It is extremely important to bear in mind that our judicial system, like this competition, is run by people and therefore subject to individual interpretations. Unexpected obstacles in the course of a trial are the rule rather than the exception. Being prepared to deal with the unexpected is a critical part of being prepared for the competition and life in general.

All trials will be governed by the Rules of the Competition and the Rules of Evidence as presented in these materials.

Questions or interpretations of these rules prior to the competition are within the discretion of the Arkansas Bar Association Mock Trial Committee, whose decision is final. During competition, interpretation of these rules rest with the presiding judges, but are subject to review by the Arkansas Bar Association Mock Trial Committee.

Arkansas Bar Association High School Mock Trial Rules of Competition

ADMINISTRATION

Rule 1.1 Rules

The Arkansas Mock Trial Competition is governed by the rules set forth below. These rules are designed to ensure excellence in presentation and fairness in judging all trials. These rules should be studied carefully before beginning your presentation. Please Note: If it is not in the rules it will not be permitted.

Questions or interpretations of these rules prior to the competition are within the discretion of the Mock Trial Committee, whose decision is final. During competition, interpretation of these rules is within the discretion of the respective presiding judges.

Rule 1.2 Code of Conduct

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

Rule 1.3 Emergencies

During a trial, the presiding judge shall have discretion to declare an emergency and adjourn the trial for a short period of time to address the emergency. During any adjournment, including for emergency purposes, there should be no communication between those in front of the bar and those in the gallery, as prohibited by these rules. Notwithstanding the foregoing, the presiding judge shall have the authority to determine the needs of the particular emergency, and by order declaring (1) that an emergency exists, (2) that it would be impossible, taking into account the type of emergency present, to prevent communication between those in front of the bar and those in the gallery (for example, in the event of a fire evacuation or medical emergency), and (3) a limit on communication as is reasonably practicable, and providing for reasonable safeguards available under the circumstances, then the communication provisions in these Rules may be temporarily suspended. In such event, however, there shall be absolutely no discussion of the case at bar or any of the elements of the trial underway by anyone during the emergency recess.

Rule 1.4 Timekeepers

Time limits are mandatory and will be enforced. Each team is required to provide its own timekeeper. Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses or opening and closing statements. Time does not stop for introduction of exhibits.

Each team attending is responsible for providing one student as an official timekeeper equipped with a stopwatch. The team's timekeeper may be a student who is not one of the official eight team members. In trial, each team is to use a set of "Time Remaining" cards with the following designations to signal time: 20:00, 15:00, 10:00, 5:00, 4:00, 3:00, 2:00, 1:00, 0:40, 0:20, and "STOP". These time cards, which must be utilized, may be created by and used at competition by each team if these cards substantially comply with these Rules. The Mock Trial Committee may provide an example template for time cards prior to the competition, and official time cards to teams on the dates of competition. Modification of intervals is not permitted.

Each team's official timekeeper must attend a pre-round debriefing by the State Coordinator, or his or her designee, prior to the beginning of the round.

Both team's timekeepers for any round of competition shall sit together and keep independent time records and independently signal remaining time. Should the two timekeepers disagree as to the amount of time utilized or remaining in any material aspect, the presiding judge shall have the authority to resolve any time dispute.

Timekeepers may not communicate with any member of their team during the trial, except with regards to the amount of time utilized or remaining.

If a team does not provide an official timekeeper, or the team's timekeeper fails to attend the pre-round briefing, that team must defer to the opposing team's official timekeeper during the competition.

THE PROBLEM

Rule 2.1 The Problem

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

The problem shall consist of three witnesses per side, all of whom normally have names and characteristics that would allow them to be played by either males or females. All three of the witnesses for each side must be called for direct examination.

Rule 2.2 Witnesses Bound by Statements

Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement or other case materials. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 2.3 as an "unfair extrapolation."

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

Rule 2.3 Unfair Extrapolation

A fair extrapolation is one that is neutral.

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

Extrapolations which are not fair are often best attacked through impeachment and closing arguments, but in any instance must be dealt with in the course of the trial. In the alternative, attorneys for the opposing team may refer to Rule 2.3 in a special objection, such as "Unfair extrapolation," or "This information is beyond the scope of the statement of facts."

Possible rulings by a judge include, but are not limited to:

- a) No extrapolation has occurred;
- b) An unfair extrapolation has occurred;
- c) The extrapolation was fair;
- d) The objection is taken under advisement.

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

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

Rule 2.4 Gender of Witnesses

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

Rule 2.5 Voir Dire

Voir dire examination of a witness is not permitted.

TEAMS

Rule 3.1 Team Eligibility

Team rosters will consist of a maximum of eight (8) students. Teams may fill the witness and attorney positions from their rosters in any manner which they choose for any single trial. Team members may not switch roles during a trial. It is up to each team to decide whether team members play the same positions or different positions should they advance to future rounds of competition.

Teams are not permitted to have two entirely different teams—one for plaintiff and one for defendant. The same team roster must compete in all rounds of a competition.

Each team is required to submit a list of the names of its team members to the Arkansas Bar Association prior to the first round of competition. A deadline for submitting the list will be announced on the registration form.

Rule 3.2 Team Composition

Teams consist of up to eight (8) official members assigned to roles representing the prosecution/plaintiff and defense/defendant sides. Six (6) members shall participate in any given round.

Student timekeepers shall be provided by the teams. These persons, however, are NOT considered participants in the round, and do not count against the eight (8) member maximum or six (6) member minimum participation.

At no time during the competition may any team for any reason substitute team members or change its roster. The Team Roster will become official at the time stated on the registration form, and may not be altered thereafter. For the National Competition, substitutions may be made.

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

A forfeiting team will receive a loss. The non-forfeiting team will be treated as having received a bye for that round. Final determination of emergency, forfeiture, reduction of points, or advancement, will be made by the Arkansas Bar Association Mock Trial Committee.

Rule 3.3 Team Presentation

Teams may present either the Prosecution/Plaintiff or Defense/Defendant sides of the case, using no less than six (6) team members. For each trial, teams shall use three (3) students as attorneys and three (3) students as witnesses.

Rule 3.4 Team Duties

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

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

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

The attorney who will examine a particular witness on direct examination is the only person who may make the objections to the opposing attorney's questions of that witness' cross-examination, and the attorney who will cross-examine a witness will be the only person permitted to make objections during the direct examination of that witness.

Each team must call three witnesses and no more than three witnesses. Witnesses must be called only by their own team and examined by both sides. Neither team may recall any witness.

Rule 3.5 Team Roster Form

Copies of the Team Roster Form must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams must be identified by the code assigned at registration. No information identifying team origin or school affiliation should appear on the form.

Before beginning a trial, the teams must exchange copies of the Team Roster Form. The Form should identify the gender of each witness so that references to such parties will be made in the proper gender. Copies of the Team Roster Form should also be made available to the judging panel and presiding judge before each round. Teams shall not disclose their place of origin or school affiliation to any member of the judging panel or to the presiding judge prior to any round. Likewise, teams must refrain from identifying their origin or school affiliation in any manner during a trial.

THE TRIAL

Rule 4.1. Courtroom Setting

The Prosecution/Plaintiff team normally shall be seated closest to the jury box if possible. No team shall rearrange the courtroom without prior permission of the presiding judge or the Regional or State Coordinator.

Rule 4.2. Stipulations

Stipulations will be considered a part of the record and already admitted into evidence.

Rule 4.3. Reading into the Record Not Permitted

Stipulations, the indictment, and the Charge to the Jury will not be read into the record.

Rule 4.4. Swearing of Witnesses

Witnesses who shall testify in any round of competition shall be sworn before testifying. This may be done at the opening of the round, or at any time before the witness testifies, at the discretion of the presiding judge.

The following oath may be used before questioning begins:

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

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate that all witnesses are assumed to be sworn, or the oath will be administered by (a) the presiding judge, or (b) a bailiff. Witnesses shall stand if able during the oath.

Rule 4.5. Trial Sequence and Time Limits

A general summary of the steps in a mock trial are as follows:

The Opening of Court. The bailiff will call the Court to order by announcing: “All rise. The Circuit Court of ___ County is now in session; the Honorable Judge ____ presiding.” The case will then be announced by the bailiff or presiding judge: “The Court will now hear its next matter on the docket, the case of ____ v. ____.” The presiding judge may then ask both sides if they are ready to proceed.

Opening Statements. The purpose of an opening statement is to introduce counsel and the client, and to acquaint the judge/jury with the nature of the case. Outline the case from your point of view and mention key expected testimony; tell the judge/jury what sort of relief you are requesting.

Direct Examination. The attorneys call their own witnesses and conduct a direct examination. Testimony and other evidence supporting that side’s case is presented.

Cross-examination. The attorney cross-examining seeks to clarify or cast doubt upon the testimony of the other party’s witness. Leading questions may be used.

Re-direct Examination. The attorney who conducted the direct examination of the witness may ask further questions, limited to the scope of cross-examination.

Re-cross Examination. The attorney who conducted the cross-examination of the witness may ask further questions, limited to the scope of re-direct examination. Leading questions may be used.

Closing Arguments. The purpose of closing arguments is to summarize the case based upon the evidence introduced at trial. Closing should include an explanation of how the evidence presented has satisfied the elements of the charge/claim or any defense, point out testimony that supports your case and/or damages the opposing party’s case, and ask for a ruling in your favor. Students are discouraged from reading a scripted closing.

Deliberations. At the close of the trial, the presiding judge will call a short recess, and the judges will retire to complete their scoring, cast their ballots, and to prepare for critiques.

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)
2. Direct and Redirect (optional) Examination (25 minutes per side)

3. Cross and Re-cross (optional) Examination (20 minutes per side)
4. Closing Argument (5 minutes per side)

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

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

Rule 4.6 Timekeeping

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

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

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

Rule 4.7 Time Extensions and Scoring

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

Rule 4.8 Motions Prohibited

A motion for directed verdict, acquittal, or dismissal of the case at the end of the Prosecution/Plaintiff's case may not be used. No written pretrial motions may be made.

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

Rule 4.9 Sequestration

Teams may not invoke the rule of sequestration.

Rule 4.10 Bench Conferences

Bench conferences may be granted at the discretion of the presiding judge, but should be made from counsel table in the educational interest of handling all matters in open court, and so that the scoring judges may hear the entire proceeding.

Rule 4.11 Supplemental Material; Costumes

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

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

Rule 4.12 Trial Communication

Instructors, alternates, and observers shall not talk to, signal, communicate with, or coach their teams during the trial. This rule remains in force during any recess time which may occur prior to the judges retiring to score and/or deliberate. Team members may communicate among themselves during the trial. However, no disruptive communication is allowed. Signaling of time by the teams' timekeepers shall not be considered a violation of this rule.

***Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar. This prohibition does not include a team's timekeeper, but it does include any other person, including persons recording the competition by camera, video, and the like (assuming no team objects pursuant to Rule 4.14).*

***Once the judges leave for scoring and/or deliberation, participants and observers may converse and wish each other luck and exchange compliments.*

Rule 4.13 Viewing a Trial

Team members, alternates, attorney coaches, teacher sponsors, and any other persons directly associated with a mock trial team, except for those authorized by the Mock Trial Committee, are not allowed to view other teams in competition, so long as their team, or another team representing their school, remains in the competition. Notwithstanding the foregoing, in the event of a bye round, team members, alternates, attorney coaches, teacher sponsors, and any other persons directly associated with a team receiving a bye round during the competition may view rounds including another team from their school, if their school fields two teams. All teams eliminated from the Competition following the Preliminary rounds may view the Championship Round

Rule 4.14 Videotaping/Photography

Any team has the option to refuse participation in videotaping, tape recording, still photography, or media coverage by anyone other than a photographer designated by the Mock Trial Committee.

Media coverage, including videotaping and photography, will be allowed by the two teams in the State Championship round.

Rule 4.15 Jury Trial

The case will be tried as if to a jury. Arguments are to be made to the judge and jury. Teams may address the performance judges as the jury.

Rule 4.16 Standing During Trial

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

Rule 4.17 Objections During Opening Statement/Closing Statement

No objections may be raised during opening statements or during closing arguments. If a team believes an objection would have been proper during the opposing team's opening statement or closing argument, one of its attorneys may, following the opening statement or closing argument, stand to be recognized by the judge and may say, "If I had been permitted to object during opening/closing arguments, I would have objected to the opposing team's statement that _____." The presiding judge will not rule on this "objection." Presiding and scoring judges will weigh the "objection" individually. No rebuttal by the opposing team will be heard.

Rule 4.18. Objections

In addition to objections made under the Rules of Procedure or the Rules of Evidence, teams may make the following objections:

1. Argumentative Questions: An attorney shall not ask argumentative questions.
2. Lack of Proper Predicate/Foundation: Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.
3. Assuming Facts Not in Evidence: Attorneys may not ask a question that assumes unproved facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by evidence (sometimes called a “hypothetical question”).
4. Questions Calling for Narrative or General Answer: Questions must be stated so as to call for a specific answer. (Example of improper question: “Tell us what you know about this case.”)
5. Non-Responsive Answer: A witness’ answer is objectionable if it fails to respond to the question asked.
6. Repetition: Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

Rule 4.19 [Reserved]

Rule 4.20 Procedure for Introduction of Exhibits

Document and other tangible items should be introduced into evidence so that the judge and jury may consider them, and before publication to the jury. As an example, the following steps effectively introduce evidence:

1. All evidence should be pre-marked as exhibits (usually done as part of the published case materials).
2. Ask for permission to approach the witness. “Your Honor, may I approach the witness with what has been marked for identification purposes as Exhibit No. ___?”
3. Show the exhibit or provide a copy to opposing counsel before approaching the witness.
4. Approach and ask the witness to identify the exhibit. “I now hand you what has been marked for identification as Exhibit No. _____. Would you identify it please?” Witness should answer to identify only.
5. Ask the witness a series of questions that are offered for proof of the admissibility of the exhibit (normally referred to as “laying a foundation”). These questions lay the foundation or predicate for admissibility, including questions of the relevance and materiality of the exhibit.
6. Once a foundation has been laid, offer the exhibit into evidence. “Your Honor, we offer Exhibit No. ___ into evidence.”
7. The Court will normally ask the opposing party, “Is there an objection?” (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object to lack of foundation at this time, and explain why the foundation is lacking.)
8. Opposing counsel should respond to the Court’s questioning: “No, Your Honor,” or “Yes, Your Honor.” If the response is “yes,” the specific objection(s) must be stated for the record. The Court will normally ask, “Is there any response to the objection?”
9. Once arguments on any objection have concluded, the Court will usually state: “Exhibit No. ___ (is/is not) admitted.” When admitted, questions on content may be asked.

Rule 4.21 Use of Notes

Attorneys may use notes in presenting their cases, although this practice is discouraged. Witnesses are not permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table verbally or through the use of notes. Team members may not communicate with anyone outside the bar verbally or through the use of notes until the round has concluded. The use of laptops or other electronic devices is prohibited, unless used as a reasonable accommodation.

Rule 4.22 Redirect/Recross Examination

Redirect and recross examinations are permitted, provided they conform to the restrictions in Rule 611 of the Mock Trial Rules of Evidence.

Rule 4.23. Scope of Closing Arguments

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

Rule 4.24 The Critique

The judging panel is allowed ten (10) minutes for debriefing. The timekeeper will monitor the critique following the trial. Presiding judges are collectively to limit critique sessions to the 10 minutes total time allotted.

Rule 4.25 Offers of Proof

No offers of proof shall be requested or tendered.

JUDGING AND TEAM ADVANCEMENT**Rule 5.1 Finality of Decisions**

Decisions of the judging panel are subject to review by the Arkansas Bar Association Mock Trial Committee. All decisions made by the Mock Trial Committee are final.

Rule 5.2 Composition of Judging Panels

The judging panel will consist of one presiding judge and two performance judges, all three of whom complete score sheets. At the discretion of the Mock Trial Committee, additional performance judges may be used in the Championship round. All presiding and performance judges will receive the mock trial manual, which includes the rules, the case, judges' scoring materials, and competition instructions.

In the event of an emergency (i.e., sudden illness, etc.), if a judging panel member must leave the courtroom, the presiding judge will call for a brief recess, assess whether the judging panel

member will be able to return in a reasonably short period of time, and then resume the proceedings upon the panel member's return to the courtroom. If the panel member is unable to return to the courtroom, the State coordinator must be informed. Once the panel composition is adjusted by the coordinator to best meet the requirements of the rules, then the round should continue. During any recess under this rule, the teams, whenever possible, should remain seated in their appropriate positions within the courtroom until the round resumes.

Rule 5.3 Score Sheets/Ballots

The term "ballot" will refer to the decision made by a scoring judge as to which team made the best presentation in the round. The term "score sheet" is used in reference to the form on which speaker and team points are recorded. Score sheets are to be completed individually by the scoring judges. Scoring judges are not bound by the rulings of the presiding judge or *vice versa*. The team that earns the highest points on an individual judge's score sheet is the winner of that ballot. The team that receives the majority of the three ballots wins the round. The ballot votes determine the win/loss record of the team for power-matching and ranking purposes. After the competition, the Mock Trial Committee will provide each team redacted, electronic copies of its score sheets upon request.

Rule 5.4 Completion of Score Sheets and Evaluation Process

Each scoring judge shall record a number of points (1-10) for each category of presentation in the trial. At the end of the trial, each scoring judge shall total the sum of each team's individual points and place this sum in the Column Totals box.

In the event of a tie in the Column Totals boxes, the scoring judge must decide which team, in his or her opinion, performed better overall, and shall circle on the score sheet the team he or she believes should win the ballot. That team shall be deemed to have won the judge's ballot, despite the numerical tie.

The presiding judge is the authority on matters concerning courtroom procedure, and he/she may comment on or question the proceedings, the student attorneys, or the witnesses at any time during the trial. Those comments, questions, and any responses thereto may or may not be taken into account by an individual scoring judge.

The presiding and performance judges will award the team points in several performance categories. The judges will record the scores on their ballots. A team wins a ballot by scoring more total points on the ballot than the other team (except in the event of a tie). A team wins the competition round by winning at least two ballots. If in the unusual case a competition round is scored by only two judges and neither team wins both ballots, the winner is determined by the combined total points of both ballots.

Questions regarding judging should be directed to the Mock Trial Committee. Any questions regarding judging should be addressed on the day of competition or the following work day.

Judges should follow Forms "A" and "B" of these Rules when evaluating and scoring the teams.

Rule 5.5 Team Advancement

Teams will be ranked based on the following criteria in the order listed:

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

The four teams ranked highest based on these criteria will advance to the Semifinal Round. At the Semifinal Round, the highest-ranked team will compete against the fourth-highest ranked team, and the second-highest ranked team will compete against the third-highest ranked team. The two winners of the Semifinal Round will advance to the Championship Round. The Semifinal Round shall follow the same procedures as the Championship Round. The winners of the Semifinal Round will be determined by ballots from the Semifinal Round only. The Arkansas Mock Trial Competition Champion will be determined by ballots from the Championship Round only.

Rule 5.6 Power Matching/Seeding

A random method of selection will determine opponents in the first round, except no team shall face a team from the same school in the first round of competition. A power-match system (as described below) will determine opponents for all other rounds. The two teams emerging with the strongest record from the Preliminary rounds (as determined by the criteria set forth in Rule 5.5) will advance to the Championship round. The Arkansas Mock Trial Competition Champion will be determined by ballots from the Championship Round only.

The Mock Trial Committee shall endeavor to use software for the purposes of matching opponents and seeding. Whether done using software or manually, the power matching system will provide as follows:

1. Pairing for the first round will be at random;
2. All teams are guaranteed to present each side of the case at least once. To the greatest extent possible, teams will alternate side presentation in subsequent rounds;
3. Brackets and sub-brackets will be determined by win/loss record. If the number of teams in a win/loss bracket is equal to or greater than twelve (12), the bracket will be split in half to create two (2) sub-brackets for power-matching purposes only. Sorting within brackets and sub-brackets will be determined in the following order: (1) win/loss record; (2) ballots; (3) total points; then (4) point spread.
4. Teams will not meet the same opponent twice; and
5. Where a "bye" is needed, it will be assigned to the lowest seeded team that has not received a "bye," with the exception of the first round of competition.

Rule 5.7 Selection of Sides

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

1. If the teams competed against each other in the Preliminary rounds, the teams will switch sides for the Championship round.
2. If the teams did not compete against each other in the Preliminary rounds, the team with the code which comes first alphabetically or numerically will be considered the "Designated Team."
3. A coin will be tossed by a designee of the Mock Trial Coordinator. If the result of the coin toss is heads, the "Designated Team" shall represent the prosecution/plaintiff. Otherwise, the "Designated Team" shall represent the defendant.

Rule 5.8 Odd Number of Teams Participating

A "bye" becomes necessary when an odd number of teams are present for any given round of the tournament. In the event of a circumstance resulting in an odd number of competing teams in a given round, the following procedure will apply:

1. A team receiving a "bye" in the first round of competition will be awarded a win and three ballots for that round. For the purposes of power matching, the team will temporarily be given the average number of points for all round one winners.
2. A team drawing the "bye" in subsequent rounds will, by default, receive a win and three ballots for that round. For the purposes of power matching, the team will temporarily be given points equal to the average of its own points earned in its preceding trials.
3. At the end of the final Preliminary round, the average of all actual trial rounds participated in by the team will be used for the final points given for that team's bye round.

DISPUTE RESOLUTION

Rule 6.1 Reporting a Rules Violation/Inside the Bar

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

If any team believes that a substantial rules violation has occurred, one of its student attorneys must indicate to the presiding judge that the team intends to file a dispute. The scoring panel will be excused from the courtroom and the presiding judge will provide the student attorney with a dispute form, on which the student will record in writing the nature of the dispute. The student may communicate ONLY with co-counsel and/or student witnesses before lodging the notice of dispute or in preparing the form

AT NO TIME IN THIS PROCESS MAY TEAM SPONSORS OR COACHES COMMUNICATE OR CONSULT WITH THE STUDENT ATTORNEYS. ONLY STUDENT ATTORNEYS MAY INVOKE THE DISPUTE PROCEDURE.

Rule 6.2 Dispute Resolution Procedure

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

Rule 6.3 Effect of Violation on Score

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

Rule 6.4 Reporting of Rules Violation/Outside the Bar

Disputes which occur outside the bar during a trial round may only be brought by the team's teacher sponsor or attorney coach. Such disputes must be made promptly to the Regional or State Coordinator, who will ask the complaining party to complete a dispute form. The form will be taken to the competition's communication's center, whereupon a Dispute Resolution Panel designated by the State Coordinator will consider and rule on the charge. The Coordinator will notify all pertinent parties and allow time for a response, if appropriate. The Dispute Resolution Panel will notify the judging panel of the affected courtroom of the ruling on the charge and/or may assess an appropriate penalty. An appropriate penalty may include disqualification.

MISCELLANEOUS

Rule 7.1 Eligibility of Student Participants/Teams

All team members must be a 9th-12th grade student enrolled full time in a public or private school in the State of Arkansas or a home-school student registered as such with the State of Arkansas. Schools need to check with the Arkansas Activities Association to verify eligibility to compete in non-athletic events.

Each school will be permitted to enroll up to two (2) separate teams in the Competition. If more than one team is enrolled in the Competition, the teams must be composed entirely of different students; the teams will be treated separately for purposes of the Competition, except as otherwise provided in the Rules, including Rule 4.13 and Rule 5.6. Substitutions may not be made between teams at any point after the registration period ends. Each team must separately register for the Competition, and must pay a separate registration fee.

Rule 7.2 Dress and Conduct of Participants

Participants should be properly attired for attending court. Team members should be aware that dress/appearance creates an impression and should dress accordingly.

No gum chewing, food, candy, beverages (except water), cell phones, or other distracting devices are allowed in the courtroom. Offenders may be asked to leave the courtroom. If the offender is an active team member, the team may be disqualified for that round.

Public facilities are on loan for this competition, and should be left as clean as possible at the end of each round.

The Mock Trial Committee and its representatives have the exclusive authority to establish the time and location for competition; participating schools must comply.

Each school participating in the competition must have at all times a teacher sponsor, attorney coach, or other adult designated by the school present and responsible for the team members.

Rule 7.3 Questions Regarding Rules

All questions regarding these rules must be sent to the attention of the Mock Trial Coordinator at:
Arkansas Bar Association
ATTN: Mock Trial Coordinator
2224 Cottdale Lane
Little Rock, AR 72202
(501) 375-4606
Fax: (501)375-4901
E-mail: cnewton@arkbar.com

Responses to any inquiries will be posted on the Mock Trial page of the Arkansas Bar Association's website. No questions will be answered orally. Each participating team is responsible for checking the website periodically for updates and clarifications.

Rule 7.4 Registration Fees

The registration fee for Competition each year shall be as established by the Arkansas Bar Association, and shall be nonrefundable after the registration deadline. The Arkansas Bar Association shall set the registration deadline in its discretion.

Rule 7.5 Inclement Weather or Competition Emergency

If the Arkansas Bar Association determines, in its sole discretion, that inclement weather or another event endangers or compromises the date selected for the Competition, it may reschedule the Competition. In that event, a previously designated “Inclement Weather” or other alternative date shall become the official date of Competition. All competitions held on an Inclement Weather or alternative date may include alterations to the amount of days, number of rounds, amount of judges per round, structure of the Competition, and other rules, as the Arkansas Bar Association may determine. If the Bar Association determines it is not feasible to hold the competition on the scheduled date or on the “Inclement Weather” or other alternative date, then the Competition shall be cancelled.

Arkansas Bar Association High School Mock Trial Rules of Evidence

In trials in the United States, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence will probably be allowed by the judge. The burden is on the attorneys to know the Arkansas Bar Association High School Mock Trial Rules of Evidence and to be able to use the rules to protect their client and to fairly limit the actions of opposing counsel and their witnesses.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this mock trial competition, the Rules of Evidence have been modified and simplified. These rules are based on the Federal Rules of Evidence and its numbering system. Where a rule number or letter is skipped, the rule was deemed inapplicable to mock trial procedure. Not all judges will interpret the rules of evidence or procedure the same way, and you must be prepared to point out the specific rule (quoting it, if necessary) and to argue persuasively for the interpretation and application of the rule you think proper. No matter which way the judge rules, you should accept the ruling with grace and courtesy.

The Arkansas Mock Trial Rules of Competition and these Arkansas Bar Association High School Mock Trial Rules of Evidence govern the Arkansas Bar Association High School Mock Trial Competition.

ARTICLE I. GENERAL PROVISIONS

RE 101. Scope

These Rules of Evidence govern the trial proceedings of the Arkansas Bar Association High School Mock Trial Competition.

RE 102. Purpose and Construction

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

ARTICLE II. JUDICIAL NOTICE

The Federal Rules of Evidence regarding Judicial Notice are not applicable.

ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

The Federal Rules of Evidence regarding Civil Actions and Proceedings are not applicable.

ARTICLE IV. RELEVANCY AND ITS LIMITS

RE 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

RE 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided in these Rules. Evidence which is not relevant is not admissible.

RE 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.

RE 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(a) **Character Evidence.** Evidence of a person's character or a trait of character, is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

- (1) **Character of accused** – In a criminal case, evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut same, or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404(a)(2), evidencing the same trait of character of the accused offered by the prosecution;
- (2) **Character of alleged victim** – In a criminal case, evidence of a pertinent character trait of the alleged victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the aggressor;
- (3) **Character of witness** – Evidence of the character of a witness as provided in Rules 607, 608 and 609.

(b) **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan,

knowledge, identity, or absence of mistake or accident, and subject to the limitations imposed by these rules.

RE 405. Methods of Proving Character

(a) **Reputation or opinion.** In all cases where evidence of character or a character trait is admissible, proof may be made by testimony as to reputation or in the form of an opinion. On cross-examination, questions may be asked regarding relevant, specific conduct.

(b) **Specific instances of conduct.** In cases where character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

RE 406. Habit; Routine Practice

Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization, on a particular occasion, was in conformity with the habit or routine practice.

RE 407. Subsequent Remedial Measures

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the 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, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measure when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

RE 408. Compromise and Offers to Compromise

(a) **Prohibited uses.** Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:

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

(2) conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or agency in the exercise of regulatory, investigative, or enforcement authority.

(b) **Permitted uses.** This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness's bias or prejudice; negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or prosecution.

RE 409. Payment of Medical or Similar Expenses

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

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

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

- (a) a plea of guilty which was later withdrawn;
- (b) a plea of *nolo contendere*;
- (c) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
- (d) any statement made in the course of plea discussions made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty which is later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in fairness, be considered with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

RE 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

RE 501. General Rule

There are certain admissions and communications excluded from evidence on grounds of public policy. Among these are:

- (1) communications between husband and wife;
- (2) communications between attorney and client;
- (3) communications among grand jurors;
- (4) secrets of state; and
- (5) communications between psychiatrist and patient.

ARTICLE VI. WITNESSES

RE 601. General Rule of Competency

Every person is competent to be a witness.

RE 602. Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses. (See Rule 2.2.)

RE 607. Who May Impeach

The credibility of a witness may be attacked by any party, including the party calling the witness.

RE 608. Evidence of Character and Conduct of Witness

(a) **Opinion and reputation evidence of character.** The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.

(b) **Specific instances of conduct.** Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.

RE 609. Impeachment by Evidence of Conviction of Crime

(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.

RE 610. Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

RE 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.

RE 612. Writing Used to Refresh Memory

If a written statement is used to refresh the memory of a witness either while or before testifying, the Court shall determine that the adverse party is entitled to have the writing produced for inspection. The adverse party may cross examine the witness on the material and introduce into evidence those portions which relate to the testimony of the witness.

RE 613. Prior Statements of Witnesses

(a) **Examining Witness Concerning Prior Statement.** In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) **Extrinsic Evidence of Prior Inconsistent Statement of Witness.** Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

RE 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.

RE 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.

RE 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

RE 704. Opinion on Ultimate Issue

(a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

RE 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the Court requires otherwise. The expert may in any event may be required to disclose the underlying facts or data on cross examination.

ARTICLE VIII. HEARSAY

RE 801. Definitions

The following definitions apply under this article:

(a) **Statement.** A "statement" is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) **Declarant.** A "declarant" is a person who makes a statement.

(c) **Hearsay.** "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) **Statements which are not hearsay.** A statement is not hearsay if -- ...

- (1) **Prior statement by witness.** The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or
- (2) **Admission by a party-opponent.** The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

RE 802. Hearsay Rule

Hearsay is not admissible, except as provided by these Rules.

RE 803. Hearsay Exceptions, Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, regardless of whether 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; 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.

[Subsections (9), (11)—(15), (17), (19), & (20) are reserved]

RE 804. Hearsay Exceptions; Declarant Unavailable

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

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

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

(3) testifies to not remembering the subject matter;

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

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

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

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

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

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

(1) **Former Testimony.** Testimony that:

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

(B) is now offered against a party who had — or, in a civil case, whose predecessor in

interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

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

(3) **Statement Against Interest.** A statement that:

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

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

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

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

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

(5) Not Applicable

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

RE 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.