

2014 High School Mock Trial Forum Discussions

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Postings as of 1/22/14:

Publishing Exhibits

Question: Since individual jury members (i.e. scoring judges) won't have individual copies of exhibits/evidence, is there an appropriate or customary method teams use for publishing the evidence to the jury? Would, say, a plaintiff's attorney publish all the admitted evidence at the end of the case in chief? Or would he/she publish the evidence at the conclusion of each witness?

Answer: The presiding and scoring judges in Mock Trial have already seen all the exhibits, and there are copies available to the judges during scoring, so there is no need to "publish" them by actually handing copies to them. If there is something specific the attorney or witness wants to point out, they can do so through testimony or by having the witness stand in front of the jury (you must ask the presiding judge for permission to do this). If, however, you still want to publish everything to the jury, you can ask the presiding judge for permission to do so at the end of your case. (Most presiding judges will simply say they will deem them to have been published, without the necessity and time of actually publishing them.)

Reasonable Inference vs. Creation of Material Fact

Question: Can you explain the fine line between a reasonable inference and creation of material fact? When exactly has a reasonable inference turned into creation of material fact? I'll ask a more specific version of this important question. When a fact asserted in a witness statement is made without evidence explaining or implying personal knowledge, are you permitted by the rules to reasonably infer how the witness knows? If so, can you give examples that clearly comply with and clearly violate the rules?

Answer: There is no simple answer to this question. A reasonable inference is one with which most reasonable people would agree. For example, most reasonable people would expect someone in the same room with another person could hear something that the other person yelled. However, it would be a creation of a material fact if someone said "Mr. Smith called me on the phone and told me this" if there is no evidence in any statement of such a phone call.

How a person could reasonably know a fact asserted in his/her witness statement will depend upon a) what the fact is, and b) the surrounding circumstances. Hopefully the case materials give you enough information to argue a reasonable basis for how the witness has knowledge of a fact.

You should be careful with the difference between an opinion (which requires no evidence) and a fact.

Scope of Questioning for Expert Witnesses

Question: Expert witnesses in the case are supposed to have read the affidavits in the case. Can we confront them with statements made in the other witnesses' affidavits or is that outside of the proper scope of questioning?

Answer: Students remain free to testify with respect to testimony made during the trial itself, provided that they comply with the following provision in Rule 2.3: "If a witness is asked information, either during direct or cross-examination, that is not contained in the witness' statement, the answer must be consistent with the statement and may not materially affect the witness' testimony or any substantive issue of the case. An answer that is inconsistent with the statement and that materially affects the witness' testimony or a substantive issue in the case is a material fact that violates this rule, even if the testimony was offered innocently, accidentally, and in good faith. "

Response Question: Are you saying that an attorney may ask a witness testify to another witnesses's testimony they made during the trial? If so won't that be violating Special Mock Trial Rule 902 - Argumentative?

Answer #1: A witness can be asked about anything else in the case, but they are not bound by anything other than their own affidavit (statement). Asking about another witness's statement or trial testimony could be argumentative, but the opposing counsel has the burden to object. If there is no objection or the presiding judge rules it is not argumentative, the witness may answer; however, per Rule 2.3, the witness's answer must remain consistent with that witness's own statement.

For example, an expert could be asked "In forming your conclusion, did you take into account that Mr. Smith said he heard the shot?" First, this is not argumentative. Second, the expert has to answer in a manner that is consistent with the expert's statement; the expert cannot say "Oh, I did not, that totally changes what I said in my affidavit."

Comparative Negligence or Negligence

Question: Are we trying to prove Comparative Negligence or Negligence? Our attorney coach says that there is a difference and it will help us try the coach to know which one we are using.

Answer: The Plaintiff is trying to prove the Defendants were Negligent. The fall-back position would be that the Defendants were at least more Negligent than the Plaintiff/Decedent. How you argue this is a strategic decision your team has to make.

Questions that Require an Inferred Answer

Question: In trial prep, we are anticipating questions that would require an inferred answer. If the cross asks such a question, do the rules allow us to object that the question calls for the creation of material fact (COMF)?

For example, suppose the statement for a witness to a car wreck doesn't describe the witness's vantage point. The defense attorney might still ask questions about the witness's ability to see the wreck. In anticipation of such questions, the witness should, in my view, prepare by adding reasonably inferred details. If the crossing attorney asks, "other cars were between you and the wreck, isn't that right?", can the witness's attorney object before the witness gives an answer that might run afoul of the rule against COMF?

I think this objection has merit. It gives the judge a chance to rule before the answer is put in evidence. The judge could overrule the objection either because the response isn't material or because a material response isn't required. The judge could also sustain the objection and allow the crossing attorney to either withdraw the question or accept the answer. After accepting the answer, the crossing attorney could still impeach the witness but could not raise a COMF objection.

Answer: The better practice is to have your witnesses prepared to give an answer on cross that is reasonably inferable from the materials. If the crossing attorney asks a question that is not directly answered in the witness's affidavit and the witness gives a reasonably-inferable answer, the crossing attorney is stuck with that answer. To use your example, if the crossing attorney asks, "other cars were between you and the wreck, isn't that right?", the witness can answer in whatever way best helps your case – both "yes" or "no" would be reasonable (unless, of course, this information is in that witness's statement, in which case the witness is bound by it.)

There may be times where a preemptive "the question calls for the creation of a material fact" objection would be advisable, but it would be pretty rare.

Witnesses May Not be Sequestered

Question: In this year's competition rules it states that witnesses may not be sequestered. In the explanation, it is that they are not actually removed from the courtroom; however I want to say in the past it also said they are constructively sequestered. Meaning we are to assume they are not hearing other witnesses' testimony. Is this considered to be the same, or now is it to be considered that they are hearing the testimony and can use other witnesses' testimony during their direct or cross examination? Please explain what this means for clarification. Thank you!

Answer: The witnesses are present and can hear the testimony of other witnesses and arguments of the attorneys. A witness can refer to what they have heard during the trial; however, they are not bound by anything other than their own affidavit.

Jamie Hagar's Age

Question: Is it appropriate to post likely errors in the file? An obvious one is Hagar's age. S/He's supposed to be a 47 year old who graduated from college in 1979. Fifty-seven would be about right.

Answer: A correction was made on page 43, line 1 to reflect that Jamie Hagar's age is 57 and not 47.

Correction – Competition Rule 4.11 – Costuming and Props

There is a correction to competition rule 4.11 found on pages 5 and 27 in the competition handbook, first sentence, add "NOT."

Correction: 4.11 Costuming and Props: Teams may **NOT** use as props or demonstrative objects other than items that are officially provided by the SC Bar as part of the case materials....

Teams Prepare for Both Sides

Question: Does our team have to prepare for both sides; Plaintiff and Defendant? Or, does the SC Bar determine which side the team must prepare for? And, when will that information be given?

Answer: Every team prepares for both sides to be performed during the competition. Each side will be performed at least once. Seven business days prior to the competition, teams are notified what side your team will perform in the first round. Second and third round side performance is announced after each round on the day of the competition. Since there are three rounds, one side will perform twice.

Holding Rooms at Courthouses

Question: I would like a little more clarification on the reserving a room in the courthouse. I am sure the courthouses are different, but I am not sure how this would work in Horry County. The Horry County side rooms are typically small and only big enough for one team, but I think there are enough for all the teams on multiple floors. What would you constitute as reserving the room?

Answer:

Horry County Courthouse - The side rooms in question at the Horry County Courthouse are for first come first serve basis and are NOT to be reserved in advance as there are not enough rooms for all the teams. **IMPORTANT NOTE:** Teams are to go directly to their courtrooms and not use rooms as a holding room prior to the competition. They are intended for food breaks only.

Lexington - no side meeting rooms or rooms at Lexington Town Hall are to be reserved.

Greenville - no side meeting rooms are to be reserved.

Lowcountry - there are no rooms to reserve.

[Last Updated: 2/3/2014]

Teams and Visitors Watching Rounds

Question: May our entire team watch each trial in which one side is performing? For example, if our Plaintiff team is performing then our Defense team may sit in the same courtroom and watch?

Answer: Your entire team may watch the round performing. However, keep in mind that a team only has 14 team badges for students. If your team is over 14 members, the remaining team members will wear visitor badges from your allotment of 24 badges. This will reduce the number of visitors that can also watch a round if students are also wearing visitor badges. If a team has more than 24 visitors, it is advised that parents of Plaintiff students watch one round and then the parents of Defense students watch that round.

Medical Terminology and COMF

Question: Is it considered a creation of material fact to use the definition of medical terminology in testimony that is not present in the materials? For example, hypoxia is a lowered level of oxygen in the blood. Hypoxia is the only term in the materials. Can a witness testify to the term using the real definition?

Answer: It is not a creation of material fact. It might violate the rule saying you can use only the materials provided by the Bar, but probably not where you are simply using the definition of a word. If you go further and try to testify about potential causes or treatments or anything else that requires actual research, that would likely violate the rule regarding using other materials.

Moving to Strike

Question: Do we let the kids object (or ask to strike) witness testimony? Couldn't find an answer in my materials.

Answer: An attorney may move to strike testimony or other evidence if it was previously admitted without objection but new information makes the prior evidence inadmissible. This is handled the same as an objection. Example: "Your honor, I now move to strike the testimony given a few minutes ago from this witness on direct regarding the color of the car, based on her testimony now under cross that she did not actually see the car and only heard someone else talking about it. Therefore the earlier testimony was hearsay." The opposing attorney then has a chance to respond.

It is NOT necessary to move to strike evidence that the presiding judge has already ruled inadmissible. Example: the witness says "I heard that the car was blue." Opposing attorney: "Objection, hearsay." Presiding judge: "Sustained." There is no need to move to strike in this instance; please do not do so.

Morgan Pearce's Statement

Question: On line 52 of Morgan Pearce's statement, she states, "...Coach asked if I thought I could get my numbers **up** so I could get a college scholarship." Should this say down?

Answer: Here, "get my numbers up" means "get my numbers better" - which technically does, as your question points out, mean to reduce Morgan's race times.