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RULES OF EVIDENCE

In a trial, 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 presiding judge. The presiding 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 presiding judge will probably allow the evidence. The burden is on the team to know the rules and to be able to use them to protect their client and to limit the actions of opposing counsel and their witnesses (for example, to exclude hearsay and prevent unfair extrapolation).

The mock trial rules are a modified version of the Federal Rules of Evidence. If there is any conflict not in the Mock Trial Rules of Evidence and the Federal or South Carolina Rules of Evidence, the Mock Trial Rules of Evidence will control.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of the mock trial competition, the rules of evidence have been modified and simplified below. 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, accept their ruling with grace and courtesy.

Rule 101 Scope

These rules govern proceedings in the South Carolina Mock Trial Competition.

Rule 102 Purpose and Construction

These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 105 Limited Admissibility

When evidence that is admissible to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the scoring jury accordingly.

Rule 106 Remainder of Related Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Rule 201 Judicial Notice of Adjudicative Facts

(a) Scope of rule: This rule governs only judicial notice of adjudicative facts.

(b) Kind of facts: A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary: A court may take judicial notice, whether requested or not.

- (d) When mandatory: A court shall take judicial notice if requested by a party and supplied with the necessary information.
- (e) Opportunity to be heard: A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
- (f) Time of taking notice: Judicial notice may be taken at any stage of the proceeding.
- (g) Instructing jury: In a civil action or proceeding, the court shall instruct the scoring jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the scoring jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Rule 301 Presumptions in General in Civil Actions and Proceedings

In all civil actions and proceedings, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast.

Rule 302 Applicability of State Law in Civil Actions and Proceedings

In civil actions and proceedings, the effect of a presumption respecting a fact that is an element of a claim or defense as to which State law supplied the rule of decision is determined in accordance with State law.

Rule 401 Definition of Relevant Evidence

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

Rule 402 Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise as provided by these rules. Evidence that is not relevant is not admissible.

Rule 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 of the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404 Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes

- (a) Character Evidence Generally: 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: Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same.

- (2) Character of Victim: Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first 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 the 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.

Rule 405 Methods of Proving Character

- (a) Reputation or Opinion: In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.
- (b) Specific Instances of Conduct: In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

Rule 406 Habit; Routine Practice

Evidence of the habit of a person or of 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.

Rule 407 Subsequent Remedial Measures

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408 Compromise and Offers to Compromise (not applicable in criminal cases)

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409 Payment of Medical and Similar Expenses (not applicable in criminal cases)
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.

Rule 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 the defendant who made the plea or was a participant in the plea discussions:

- (1) a plea of guilty which was later withdrawn
- (2) a plea of nolo contendere
- (3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas, or
- (4) any statement 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 later withdrawn.

However, such a statement is admissible 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 contemporaneously with it, or 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.

Rule 411 Liability Insurance (not applicable in criminal cases)
Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as agency, ownership, or control, or bias or prejudice of a witness.

Rule 501 Privileges - 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.

Rule 601 General Rule of Witness Competency
Every person is competent to be a witness except as otherwise provided in these rules. However, in civil actions and proceedings, with respect to an element of a claim or defense as to which State law supplies the rule of decision, the competency of a witness shall be determined in accordance with State law.

Rule 602 Lack of Personal Knowledge
A witness may not testify to a matter unless evidence is introduced sufficient 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's own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses.

Rule 603 Oath or Affirmation

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation, by the oath provided in these materials.

Rule 604 Interpreters

An interpreter is subject to the provisions of these rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

Rule 607 Who May Impeach

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

Rule 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 two limitations: (1) The evidence may refer only to character for truthfulness or untruthfulness, and
- (2) The 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's 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's 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's privilege against self-incrimination when examined with respect to matters which related only to credibility.

Rule 609 Impeachment by Evidence of Conviction of Crime

- (a) General Rule: For the purpose of attacking the credibility of a witness:
- (1) Evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such of a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and
- (2) Evidence that any witness has been convicted of a crime shall be admitted if it involves dishonesty or false statement, regardless of punishment.

- (b) Time Limit: Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed therefore, whichever is the later date; unless the court determines, in the interest of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs the prejudicial effect. However, evidence of a conviction more than ten years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.
- (c) Effect of pardon, annulment, or certificate of rehabilitation: Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

Juvenile Adjudication's: Evidence of juvenile adjudication is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission of the evidence is necessary for a fair determination of the issue of guilt or innocence.

Pendency of Appeal: The pendency of an appeal therefore does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

Rule 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's credibility is impaired or enhanced.

Rule 611 Mode and Order of Interrogation and Presentation

- (a) Direct Examination: Direct questions should be phrased to evoke facts from the witness. Witnesses may not be asked leading questions by the attorney who calls them. A leading question is one that suggests to the witness the answer desired by the examiner and often suggests a "yes" or "no" answer.

Example of a direct question: "Mr. Patterson, prior to today, have you ever met the subject of this petition, Jeremiah Winstead?" Example of a leading question: "Mr. Patterson, isn't it true that you kidnapped Jeremiah at the Hot Shoppes on New York Avenue?" While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story. Narrative questions are objectionable.

(b) Cross-examination (questioning of other side's witnesses):

- (1) Form of Questions: An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions tending to evoke a narrative answer should be avoided. Example of a leading question: "Mrs. Winstead, isn't it true that your son chose of his own free will to join the New Family?"
- (2) Scope of witness examination: In the mock trial competition, attorneys are allowed unlimited range on cross-examination of witnesses as long as questions are relevant to the case. Witnesses must be called by their own team and may not be recalled by either side. All desired questioning of a particular witness must be done by both sides in a single appearance on the witness stand.

Rule 612 Writing Used to Refresh Memory

If a witness uses a writing to refresh memory for the purpose of testifying, either- (1) while testifying, or (2) before testifying, if the court in its discretion determines that it is necessary in the interest of justice, an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which related to the testimony of the witness.

Rule 613 Prior Statements of Witnesses

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 content disclosed to the witness at that time, but on request the same shall be disclosed to opposing counsel.

NOTE: Impeachment: On cross-examination, the attorney may want to show the jury and judge that the witness should not be believed. This is called impeaching the witness. It may be done by asking questions about prior conduct that make the witness's credibility (truth-telling ability) doubtful. Impeachment may also be done, if the witness's testimony warrants it, by asking the witness whether he has ever testified differently, then introducing the witness his/her signed and sworn statement. The attorney should ask the witness whether the statement was made under oath, at a time much closer to the events in controversy, and contained all that the witness could then remember. The attorney may then want to (1) leave the matter and point out on closing argument the contradiction between the statement and the witness's testimony (both of which were under oath), (2) ask the witness why his testimony is different today under oath than it was when it was under oath and much nearer in time to the events (this can be a dangerous question), or (3) ask the witness whether he was lying under oath when he gave his statement or lying under oath today (this can also be a dangerous question unless the contradiction is very clear, definite and material).

Rule 701 Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness' testimony in the form of inference or opinions is limited to those opinions or inferences which are (a) rationally based on the perceptions of the witness and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

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, unless the court, in its discretion, feels that the evidence may confuse the issues or is a waste of time.

Rule 703 Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by 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.

Rule 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.

Rule 705 Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefore without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Rule 801 Definitions

The following definitions apply to the hearsay rules:

- (a) Statement. A "statement" is
- (1) an oral or written assertion or
 - (2) 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 that 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, including 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 the (A) the party's own statement in either an individual or representative capacity or (B) a statement of which the party has manifested an adoption of 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 co-conspirator of a party during the course of and in furtherance of the conspiracy.

Rule 802 Hearsay Rule

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

Rule 803 Hearsay Exceptions, Availability of Declarant Immaterial

A video representation of these exceptions can be viewed at:

www.scbarr.org/media/lre/hearsay.wvx

The following are not excluded by the hearsay rule, even though the declarant is available as a witness.

- (a) Present Sense Impression: A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
- (b) Excited Utterance: A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
- (c) Then Existing Mental, Emotional, or Physical Conditions: A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.
Examples: "I'm scared" - emotional state
"I have a headache" - physical state
"I'm going to take this car out and see how fast it will go" - mental state: (intent to speed)
- (d) Statements for Purposes of Medical Diagnosis or Treatment: Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
- (e) Recorded Recollection: A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness's memory and to reflect that knowledge correctly.
- (f) Learned Treatises: To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.

- (g) Reputation as to Character: Reputation of a person's character among associates in the community.
- (h) Judgment of Prior Conviction: Evidence of a final judgment, entered at trial or upon a plea of guilty, adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.
- (i) Records of Regularly Conducted Activity: A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness; provided, however, that subjective opinions and judgments found in business records are not admissible. The term "business" as used in this subsection includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
- (j) Absence of Entry in Records Kept in Accordance With the Provisions of Subsection (f): Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of subsection (f), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.
- (k) Public Records and Reports: Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel; provided, however, that investigative notes involving opinions, judgments, or conclusions are not admissible. Accident reports required by S.C. Code Ann. §§ 56-5-1260 to -1280 (1991) are not admissible as evidence of negligence or due care in an action at law for damages.

Rule 804 Hearsay Exceptions where Declarant Unavailable

- (a) Definition of unavailability-"Unavailability as a witness" includes situations in which the declarant
- (1) is exempted by a ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;
 - (2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;
 - (3) testifies to a lack of memory of the subject matter of the declarant's statement;
 - (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity;

- (5) is absent from the hearing and the proponent of the statement has been unable to procure the declarant's attendance by process or other reasonable means.
- (b) A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying. Assume that there was no wrongdoing or misconduct intended to prevent the witness from attending or testifying.
- (c) Hearsay exceptions-The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
- (1) Former Testimony: Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with the law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.
 - (2) Statement Under Belief of Impending Death: In a prosecution of a homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.
 - (3) Statement Against Interest: A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
 - (4) Statement of Personal or Family History: (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) A statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.
 - (5) Other Exceptions: A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent

can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent makes it known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 805 Hearsay within Hearsay

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

Rule 806 Attacking and Supporting Credibility of Declarant

When a hearsay statement, or a statement defined in Rule 801(d)(2), (C), (D), or (E), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if the declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

Rule 901 Assuming Facts Not in Evidence

An attorney shall not ask a question that assumes unproven facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by the evidence. Example of question that assumes unproven facts: "When did you stop beating your wife?"

Rule 902 Argumentative Questions

An attorney shall not ask a question which asks the witness to agree to a conclusion drawn by the questions without eliciting testimony as to new facts; provided, however, that the Court may in its discretion allow limited use of argumentative questions on cross examination.

Rule 903 Ambiguous Questions

An attorney shall not ask questions that are capable of being understood in two or more possible ways.

Rule 904 Lack of Proper Predicate

Exhibits will not be admitted into evidence until they have been identified and shown to be authentic (unless identification and/or authenticity have been stipulated). Even after a proper predicate has been laid, the exhibits may still be objectionable due to relevance, hearsay, etc. That the document is "authentic" means only that it is what it appears to be, not that the statements contained in the document are necessarily true.

PROCEDURE FOR OBJECTIONS

An attorney may object any time that the opposing attorney has violated the Mock Trial Rules of Evidence. The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the presiding judge will ask the reason for it. Then the presiding judge will turn to the attorney who asked the question, and that attorney usually will have a chance to explain why the objection should not be accepted ("sustained") by the presiding judge. The presiding judge will then decide whether to "sustain" the objection, thereby disallowing the question or discarding the answer; or the presiding judge will "overrule" the objection, thereby allowing the question to be answered or the answer to remain on the trial record.

REMEMBER: Winning or losing the ruling on an objection is not what is important, but rather how knowledgeable of the Rules of Evidence the team is and how each team reacts to the decision of the presiding judge. What is important is the presentation of the objection and the opponent's response (both verbally and strategically) to the objection and to the Court's ruling.

Only the attorney "responsible" for the particular witness may object. For instance, the attorney who directly examines a witness objects when that witness is being crossed, and the attorney who crosses a witness objects when that witness is being directly examined.

Following are examples of standard forms of objection:

1. **IRRELEVANT EVIDENCE:** "I object, your Honor. The evidence/testimony is irrelevant to any issue in this case."
2. **LEADING QUESTION:** "Objection. Counsel is leading the witness."

(NOTE: Remember that an attorney may ask leading questions when cross-examining the opponent's witnesses.)
3. **IMPROPER CHARACTER TESTIMONY:** "Objection. The witness's character or reputation has not been put in issue." OR "Objection. Only the witness's character for truthfulness is at issue here."
4. **HEARSAY:** "Objection. Counsel's question is seeking a hearsay response."
(NOTE: If the witness makes a hearsay statement, the attorney should say, "The witness's answer is based on hearsay, and I ask that the statement be stricken from the record.") In responding to a hearsay objection, it may be appropriate for counsel to point out a specific exception, or to argue that the hearsay rule does not apply: "Your Honor, the testimony is not offered to prove the truth of the matter asserted, but only to show. . . ."
5. **OPINION:** "Objection. Counsel is asking the witness to give an expert opinion for which he has not been qualified."

STIPULATIONS

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

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

Also see stipulations of the parties on page 87.