Creation of Material Fact **(COMF)** Penalty Form

**P D**

**Competition Location: v.**

**❒** Charleston **❒** Georgetown **❒** Lexington **❒** Richland

**❒** Columbia **❒** Greenville **❒** Lex. - Summary **❒** Sumter

**❒** Conway **❒** Lancaster **❒** Lex. - Westbrook  **❒** **STATE Round:**  1 2 3 4 5

**Instructions for Presiding Judge:** Creation of Material Fact (COMF) objections may only be made at the time the evidence is offered and will not be entertained after the witness has been excused from the stand. The presiding judge must complete this form each time a COMF Objection is made.

* The attorney making the objection *must* support it by explaining in detail (1) how the fact gives the opponent a significant legal advantage, and (2) why it cannot be regarded as a fair inference from the case materials.
* The attorney offering the evidence must be prepared to explain either (1) that the fact does not offer a significant legal advantage or (2) that the fact can be fairly inferred from the case materials. *(Additional penalty forms are needed for more than two COMF objections.)*

**OBJECTION #1**

P D Neither

Penalty Goes To:

1. **Responding Team Code: ( P / D )**

Was a fact created that was not a fair inference? ❒ **Yes** ❒ **No** (go to 2)

***If Yes,*** is the created fact material? ❒ **Yes** ❒ **No** (go to 2)

***If Yes,*** announce that you found that a material fact was created. Instruct the scoring judges to assess a penalty of 1 to 7 points

**against the responding team** in the Penalty Box on the scoresheet.

**\*\* Since answered “YES” to both parts of question one, you do not have to answer question two.**

1. **Objecting Team Code: ( P / D )**

Was the objection made in good faith? ❒ **Yes** ❒ **No**

***If Yes,*** announce that you found no material fact was created, that the objection was made in good faith, and that no penalty will be assessed against either team.

***If no,*** announce that you found no material fact was created and that the objection was made in bad faith. Instruct the scoring judges to assess a penalty of 1 to 7 points **against the objecting team** in the Penalty Box on the scoresheet.

**Presiding Judge Notes:**

**OBJECTION #2**

P D Neither

Penalty Goes To:

1. **Responding Team Code: ( P / D )**

Was a fact created that was not a fair inference? ❒ **Yes** ❒ **No** (go to 2)

***If Yes,*** is the created fact material? ❒ **Yes** ❒ **No** (go to 2)

***If Yes,*** announce that you found that a material fact was created. Instruct the scoring judges to assess a penalty of 1 to 7 points

**against the responding team** in the Penalty Box on the scoresheet.

**\*\* Since answered “YES” to both parts of question one, you do not have to answer question two.**

1. **Objecting Team Code: ( P / D )**

Was the objection made in good faith? ❒ **Yes** ❒ **No**

***If Yes,*** announce that you found no material fact was created, that the objection was made in good faith, and that no penalty will be assessed against either team.

***If no,*** announce that you found no material fact was created and that the objection was made in bad faith. Instruct the scoring judges to assess a penalty of 1 to 7 points **against the objecting team** in the Penalty Box on the scoresheet.

**Presiding Judge Notes:**

**PENALTIES for Creation of Material Fact Objections – Rule – 6.2 (B)**

|  |
| --- |
| **Unintentional** 1 – 2 points **Intentional** 3 – 7 points |

**DECISION and SIGNATURES -- Check one that applies:**

|  |  |
| --- | --- |
|  | If the presiding judge determined that a COMF objection occurred, we certify that we have each entered a penalty in the Penalty Box in accordance with the rulings of the presiding judge and Rule 2.3, Rule 6.2-B, and Rule 6.3 of the Mock Trial Rules. |
|  | No Creation of Material Fact Objections were made and/or penalized. |

**Presiding Judge – Printed**

***\*\* STOP - If no disputes, only the presiding judge has to print name.***

**Scoring Judge #1 – Printed Scoring Judge #2 – Printed Scoring Judge #3 – Printed**

**2.3 Creation of Material Fact**

Teams shall not offer, through testimony or other evidence, a material fact that is not contained in the Mock Trial Case affidavits or exhibits. A “material fact” is a fact that cannot be reasonably inferred from the affidavits and exhibits in the Case Materials and that would provide one side a significant legal advantage.

If a witness is asked, either during direct or cross-examination, for information that is not contained in the witness’s affidavit, the witness may answer the question, but only if the answer is consistent with the affidavit and the answer does not materially change the witness's testimony or any substantive issue in the case. An answer inconsistent with the witness's affidavit that materially changes the witness’s testimony or a substantive issue in the case is creation of a material fact that violates this rule, even if the testimony was offered innocently, accidentally, or in good faith.

Objections based on this rule must be made immediately following the introduction of the challenged testimony or other evidence. See Rule 6.2(B) – (Penalties: In Trial, B. Creation of Material Fact Violations).

***Official Comment:***

*The best way for a team to expose and attack its opponent’s creation of material fact is through impeachment and closing arguments, in the ordinary course of the trial. A team that deals with creation of material facts in this fashion will generally be considered by the scoring judges to be more sophisticated, accomplished, and experienced than a team that simply objects to “creation of material fact" without trying to first impeach. Nevertheless, to ensure the integrity of the Mock Trial Competition and to provide a remedy for situations in which created material facts cannot easily be challenged through impeachment or closing argument, a special Mock Trial objection – “creation of material facts” – has been established.*

***Example:***

*Assume a defendant is asked how old he is, but the age of the witness is not contained in the affidavit. In a case for breach of contract, the fact that defendant is 30 would usually be immaterial. This witness could testify that he is 30 years old without violating the Creation of Material Fact rule. In the trial of a person for underage drinking, however, the defendant's age is material. The witness could not testify that he is 30 years old and not under 21, because it automatically establishes the defendant’s innocence - a significant legal advantage.*

*When considering whether a fact is “material” or not under this rule, ask yourself whether the creation of the fact significantly helps the other side’s case or if it is a fact that your opponent would want to include in a closing argument. If the answer is “yes,” the fact is material and you should attempt to impeach the witness with his affidavit. If you are not able to do that because of time constraints, a creation of material fact objection is appropriate.*

**SECTION VI: DISPUTE RESOLUTION**

**6.2 (B)** **Creation of Material Fact Violations:**

A team may only raise a creation of material fact violation as an evidentiary objection during the round at the time the alleged violation occurred. (See Rule 2.3 and Official Comment) A student attorney with a good faith belief that a witness has created a material fact may elect to raise an objection instead of attempting to impeach the witness. The attorney making the objection must support it by explaining in detail (1) how the fact gives the opponent a significant legal advantage; and (2) why it cannot be regarded as a fair inference from the affidavit or exhibits. In response, the opponent must be prepared to explain either (1) the fact does not give a significant legal advantage; or (2) the fact can be fairly inferred from the affidavit or exhibits. After hearing from both sides, the presiding judge immediately rules in open court on the Creation of Material Fact objection. If the presiding judge sustains the objection, each scoring judge must assess a penalty as set forth in Rule 6.3 against the team presenting the fact, not against the individual witness offering the fact. If the presiding judge overrules the objection, finding no material fact was created, the presiding judge then determines whether or not the objection was made in good faith. If the presiding judge determines the objection was not made in good faith, each scoring judge must assess a penalty before completing the scoresheet as set forth in Rule 6.3 (Scoring Penalties) against the team and not against the individual witness. Teams may not raise a creation of material fact violation during the Dispute Hearing Process noted in Rule 6.1

6.3 Scoring Penalties

The presiding judge determines if a rules violation, time violation, or creation of material fact violation occurred, and informs the scoring judges. The scoring judges consider the violation(s) raised before assessing scoring points.  ***(Creation of Material Fact penalties are listed on the front of this form.)***