



2021 / 2022
Mock Trial
Middle and High School
Competition Handbook

**A PROJECT OF THE
SOUTH CAROLINA BAR
LAW RELATED EDUCATION COMMITTEE
AND THE MOCK TRIAL SUB-COMMITTEE**

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[South Carolina Bar Foundation's IOLTA grant](#) and the [South Carolina Bar](#).

MIDDLE SCHOOL MOCK TRIAL PAST STATE CHAMPIONS

2002 – Sneed Middle	2011 – Johnsonville Middle
2003 – Myrtle Beach Middle (Coastal Region)	2012 – Forestbrook Middle
2003 – Lady’s Island Middle (Midlands Region)	2013 – Forestbrook Middle(BOC Champions)
2003 – Riverside Middle (Piedmont Region)	2014 – Forestbrook Middle(BOC Champions)
2004 – Johnsonville Middle	2015 – n/a – no state competition
2005 – Johnsonville Middle	2016 – Moultrie Middle
2006 – Hand Middle	2017 – Fort Mill Middle
2007 – Springfield Middle	2018 – Heathwood Hall Episcopal
2008 – Springfield Middle	2019 – Buist Academy
2009 – Forestbrook Middle	2020 – N/A – No State Competition
2010 – Forestbrook Middle	



2020/21 Regional Winner – JET Middle School

HIGH SCHOOL MOCK TRIAL PAST STATE CHAMPIONS

1982 – Dreher High	2002 – Berkeley High
1983 – Conway High	2003 – Bob Jones Academy
1984 – Strom Thurmond High	2004 – Bob Jones Academy..... (National Champions)
1985 – Strom Thurmond High	2005 – Berkeley High
1986 – Myrtle Beach High	2006 – Berkeley High
1987 – Strom Thurmond High	2007 – Fort Mill High
1988 – Socastee High(National Champions)	2008 – Berkeley High
1989 – Berkeley High	2009 – Fort Mill High
1990 – Irmo High	2010 – Bob Jones Academy
1991 – Berkeley High	2011 – North Myrtle Beach High
1992 – Irmo High	2012 – Strom Thurmond High
1993 – Berkeley High	2013 – North Myrtle Beach High
1994 – Middleton High	2014 – North Myrtle Beach High..(Nationals – 1st Runner Up)
1995 – Bob Jones Academy	2015 – Strom Thurmond High
1996 – Socastee High	2016 – Fort Mill High
1997 – Socastee High	2017 – Strom Thurmond High
1998 – Socastee High	2018 – Heathwood Hall Episcopal School
1999 – Socastee High	2019 – Strom Thurmond High
2000 – Berkeley High	2020 – Strom Thurmond High
2001 – Bob Jones Academy	2021 – Bob Jones Academy



2021 State High School Mock Trial Champion – Bob Jones Academy

PROFESSIONALISM AND CIVILITY AWARD WINNERS

The first Professionalism and Civility Awards were presented to one Middle School and High School team at their state competition. The competing teams nominated a team that demonstrated the following qualities inside and outside the courtroom:

- Professional demeanor
- Civility
- Integrity
- Honesty
- Fair play
- Respect for the competition
- Respect for fellow competitors
- Respect for volunteers and all associated with the program inside and outside the courtroom throughout the competition
- Respect for courthouse staff and facilities



MIDDLE SCHOOL

2016 – Heathwood Hall Episcopal (State)

2017 – Ben Lippen (Regional)

2017 – Bob Jones (Regional)

2017 – Longleaf..... (Regional)

2017 – Philip Simmons (Regional)

2017 – Ten Oaks..... (Regional)

2017 – Buist..... (State)

2018 – Cario (Regional)

2018 – Forestbrook (Regional)

2018 – Heathwood Hall Episcopal... (Regional)

2018 – Leavelle McCampbell (Regional)

2018 – Pleasant Knoll (Regional)

2018 – Chapin (State)

2019 – AL Corbett (Regional)

2019 – Bob Jones (Regional)

2019 – Heathwood Hall Episcopal... (Regional)

2019 – St. James – Santee (Regional)

2019 – Ten Oaks..... (Regional)

2019 – Chapin (State)

2020 – Chapin (Regional)

HIGH SCHOOL

2017 – Chapin (State)

2018 – Dorman..... (Regional)

2018 – Gov. Sch. for Science & Math
..... (Regional)

2018 – Indian Land..... (Regional)

2018 – Kingstree (Regional)

2018 – Spring Hill (Regional)

2018 – Wilson..... (State)

2019 – Charleston Sch. of Arts (Regional)

2019 – Fort Mill..... (Regional)

2019 – Indian Land..... (Regional)

2019 – Kingstree (Regional)

2019 – Socastee..... (Regional)

2019 – Spring Hill (Regional)

2019 – Ft. Dorchester..... (State)

2020 – Dutch Fork..... (Regional)

2020 – Heathwood Hall Episcopal(Regional)

2020 – Kingstree (Regional)

2020 – May River (Regional)

2020 – Wade Hampton (Regional)

2020 – Carolina Forest..... (State)

2021 – W.J. Keenan..... (Regional)

2021 – Lexington (Regional)

2021 – Ft. Dorchester..... (Regional)

2021 – Chas. Cty. Sch. of Arts..... (state)

HIGH SCHOOL MOCK TRIAL
COURTROOM ARTIST AND JOURNALIST STATE WINNERS

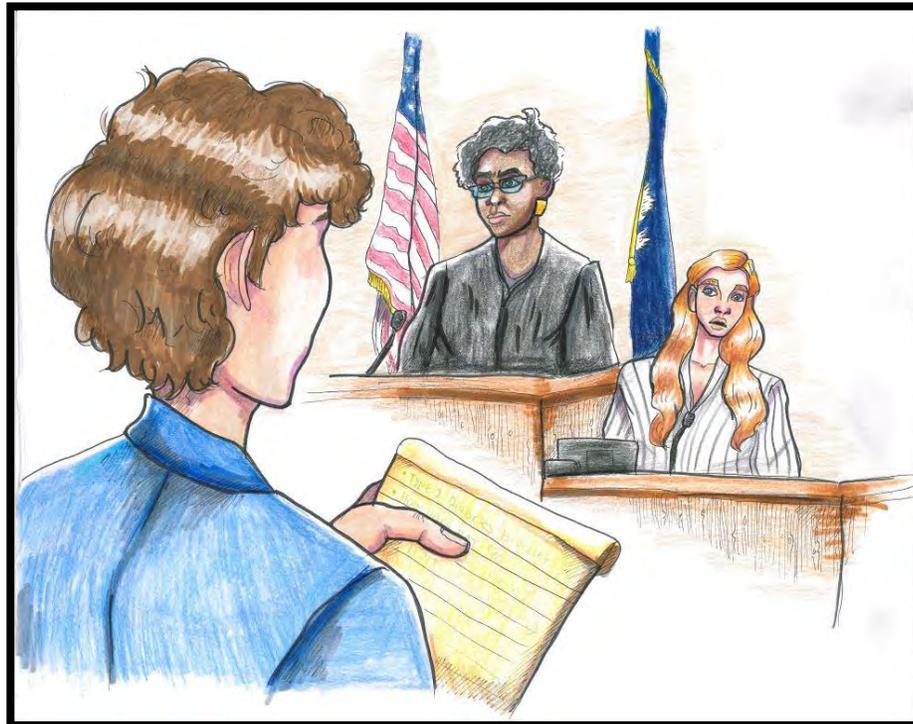
COURTROOM ARTIST

- 2011 – Jane Xu, Dreher High
- 2012 – Megan Greer,
Montessori School of Anderson
- 2013 – Elissa Na, Bob Jones Academy
- 2014 – Ezekiel King, Wade Hampton High
- 2015 – Ezekiel King, Wade Hampton High
- 2016 – Natalie Fanello,
Montessori School of Anderson
- 2017 – Marina Ataalla, Carolina Forest High
- 2018 – Ruby Dozier, Manning High
- 2019 – Grace Wood, NEXT High
- 2020 – Morela Taffe, Indian Land High
- 2021 – (no competition due to virtual)

COURTROOM JOURNALIST

- 2011 – Caylyn Bird, Spring Valley High
- 2012 – Kayla Fenstermaker,
Bob Jones Academy
- 2013 – Ya Fang, Governor’s School for
Science and Mathematics
- 2014 – Ana Kate Barker,
Bob Jones Academy
- 2015 – Jacqueline Tobin, Governor’s School
for Science and Mathematics
- 2016 – Kristal L. Herrin,
Strom Thurmond High
- 2017 – Rachel Black,
York Preparatory Academy
- 2018 – Maggie May, Dorman High
- 2019 – Rachel Black,
York Preparatory Academy
- 2020 – Ariel Burrow, Dorman High
- 2021 – (no competition due to virtual)

Samples of previous sketch entries can be viewed online. ([click here](#))



Sample Entry by Morella Taffe (Indian Land High School)

INTRODUCTION TO THE MOCK TRIAL COMPETITION

The Mock Trial program is sponsored by the South Carolina Bar Law Related Education (LRE) Division. South Carolina public schools, private schools, and homeschooled students throughout the state are invited to participate in this competitive program in one of the two categories; middle school or high school. Each participating school enters a team ideally composed of 14 – 16+ students (and a minimum of 6 students middle school and 7 students high school) and requires a teacher coach sponsor. The SC Bar LRE Division assists in locating attorney coaches to help teams prepare for the competition and provides the team with the Case Materials, the Competition Handbook, and other competition materials on the LRE website at www.sctbar.org/lre.

The Mock Trial competitions are divided into regional competitions with a culminating state competition at both the middle and high school levels. A total of twelve teams advance from regional competitions participate in their respective state competitions using the same case. For high school, the state champion represents South Carolina in the National High School Mock Trial competition using a new national case.

Teams are officially assigned to a region after the drop date assigned for each level. Once a team is assigned to a region, the team cannot switch regions without the approval of the State Mock Trial Coordinator. *(Regions are subject to be split based on courthouse capacity.)*

Competition Schedule for Middle and High Schools:

Due to the demand on courthouses and the back log of cases impacted by Covid-19, a hybrid schedule is offered below.

Students and coaches will be required to set up a free Zoom account to compete. Students may compete individually from their home, or compete as a team at the school depending on school policies and technology available.

Middle School Mock Trial:

Regionals (2-day virtual)Friday and Saturday, November 12 – 13, 2021
(If more than 20 middle school teams compete in regionals, there will be a state competition.)
State (3-day virtual)December 2, 3 and 4, 2021

High School Mock Trial:

Regionals (2-day virtual)Friday and Saturday, February 25 and 26, 2022
(If more than 20 high school teams compete in regionals, there will be a state competition.)
State (if possible - proposing in-person)
In-Person Dates (2-day):.....March 11 and 12, 2022
Virtual Dates (3-day):March 10, 11 and 12, 2022
HS Nationals (hosted by Kalamazoo, Michigan).....May 4 – 7, 2022
(It is still being determined if in-person is possible or not.)

GOALS

The goals of this program are, first and foremost, to educate South Carolina students about the basis of our American judicial system and the mechanics of litigation. The program also serves to build bridges of mutual cooperation, respect, and support between the community and the legal profession. Through participation in the Mock Trial program; students increase important skills such as listening, speaking, writing, reading, and analyzing. All participants are encouraged to keep in mind that the goal of the Mock Trial program is not to win for the sake of winning, but to learn and understand the meaning of good citizenship in a democratic republic through participation in our system of law and justice. All who participate in the Mock Trial program are winners in this sense.

Students – Your participation in Mock Trial will allow you to experience what it is like to prepare for and present a case before a presiding judge and scoring judges. Working with your team and coaches in a safe and fun learning environment provided by your school, you will learn to evaluate information and to respond quickly. As you prepare, you will sharpen public speaking and presentation skills. The greatest benefit is the opportunity to learn how the legal system works. By studying and understanding courtroom procedure, you should become more comfortable with federal and state laws as part of the legal system. Your interaction with some of South Carolina's finest attorneys and judges in a professional setting will give you a glimpse of the different interpretations of trial procedure and the different litigation styles of individual members in the legal arena.

Teacher Coaches, Attorney Coaches, and/or Judges – We strongly encourage you to focus on the goal of student participation rather than placing an emphasis on winning while preparing for the competition. Your contribution of time and talent make many experiential educational opportunities available annually to South Carolina students. Your participation is a key element to the success of this program. You can be proud of the impact you will make on the lives of these students. All coaches; teacher and attorney; should obtain and follow the school's policy on adult/children interaction for in-person and virtual interaction. An attorney is a volunteer for the school and not the SC Bar.

CASE RELEASE INFORMATION

The case is available on the Internet in the LRE section of the South Carolina Bar's Web site, located at www.sctbar.org/lre and by clicking on either the Middle or High School Mock section. The new Case Materials will be released August 13, 2021, no later than 5pm.

DISCUSSION FORUM

The Mock Trial Discussion Forum is a place to post questions concerning the content of the Case Materials, the Competition Rules, and the competition. The Discussion Forum is located on the LRE website.

[Click Here for Discussion Forum](#)

The links above take you to a registration page for the Discussion Forum. It can take up to 48 hours to gain access to the Discussion Forum once registered. The Discussion Forum should be checked often for postings. Responses posted to the questions could change Competition Rules, the Case Materials, and/or competition specifics that apply on competition day. The Discussion Forum closes ten business days prior to a competition.

HAVE MOCK TRIAL QUESTIONS?

Attorney Coach Needed..... Donald Lanier
Case..... Ask on Forum Discussion
Competition..... Ask on Forum Discussion or Contact Cynthia H. Cothran
Concerns..... Cynthia H. Cothran
Credit Card Payment..... Donald Lanier
Downloading Materials..... Donald Lanier
Forms..... Marian Kirk
Forum Registration..... Donald Lanier
General Questions..... Cynthia H. Cothran
Purchase Orders..... Marian Kirk
Registration..... Marian Kirk
Training..... Marian Kirk
Webinar Registration..... Donald Lanier

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Mock Trial Definitions

(In Reference to Mock Trial)

For additional terms not included in this section, [Click Here](#).

Accurate	Free from mistakes or errors.
Admissible Evidence	Evidence that can be legally and properly introduced in a civil or criminal trial.
Affidavit	A portion of the case that contains the witness' sworn statement.
Alternate	Students on the team serving as backups listed on the Team Roster Form (approved at the on-site registration). Alternate students can substitute for missing, late, and/or sick students prior to completing the practice scoresheet at the beginning of each round.
Answer	The defendant's response to the plaintiff's allegations as stated in the complaint . An item-by-item, paragraph-by-paragraph response to points made in a complaint; part of the pleadings .
Assertion	A confident and forceful statement of fact or belief.
Attorney Coach	An attorney volunteer who works with a school's teacher(s) and students in preparing for a Mock Trial competition.
Authentic	Real or genuine; not copied or false.
Bailiff	A student serving as a court attendant with the responsibility of announcing the opening of the court, swearing in the witnesses (if on the Prosecution/Plaintiff side of the team), monitoring the courtroom for improper communication, and ensuring all exhibits are in order before and after each trial and in their neutral location.
Ballot	Refers to the decision made by a scoring judge as to which team scored the most points in a given round. The team earning the highest points on a scoring judge's scoresheet is the winner of that ballot. The team earning at least two of the three ballots, wins the round. The number of ballots earned is one of the determining factors when power matching and for the purposes of ranking teams.
Bar	The "bar" in a courtroom is traditionally a railing or low wall separating the visitors from the presiding judge, scoring judges in the jury box, student attorneys, and testifying witnesses.
Bench Conference	When a student attorney requests to meet at the presiding judge's bench along with one of the opposing team's student attorneys; which is not permissible in Mock Trial unless requested by the presiding judge.

Bias	Prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair.
Burden of Proof	A duty placed upon a civil or criminal defendant to prove or disprove a disputed fact. In criminal cases, the Prosecution must prove the defendant's guilt beyond a reasonable doubt.
Bye Round	A special round put in place when there are an odd number of teams competing in a regional competition since each trial requires two teams. The team not assigned to compete in a round is provided a courtroom. The bye round procedure allows for the odd team not performing in any given round an alternate way to temporarily have scores for the purposes of power matching. (See Rule 5.9 Bye Round.)
Bye Team	Due to an uneven number of teams competing in a regional competition, this team is the team without an opponent in a round. This team sits out the indicated round. Due to the “bye” team assignment, the bye team is guaranteed to perform at least once with both sides of the case. This team experiences the bye round procedure for purposes of power matching. (See Rule 5.9 Bye Round.)
Case	A fictitious fact pattern drafted for the purposes of Mock Trial. The document contains statement of facts, indictment pleadings, stipulations, witness affidavits, jury charges, and exhibits.
Case in Chief	The portion of a trial whereby both the Prosecution/Plaintiff and Defense in the case present their individual evidence.
Circumstantial Evidence	Evidence based on inference and not on personal knowledge or observation.
Civil Case	A case involving disputes involving two or more people, between people and companies, or between people and government agencies; generally about something another person did or failed to do.
Closing Argument	An opportunity to provide a clear and persuasive argument to convince the scoring judges the evidence presented is sufficient to win the case for the side represented. The closing student attorney makes the final plea about what evidence is credible or not and which witnesses should be believed or not. Only facts presented in the trial may be discussed in this phase.
Competing Team Member	A student performing during a particular trial round.
Competitive Team	A team that competes in all assigned rounds at regionals and is eligible to advance to the state competition.
Complaint	The first legal document filed in a legal lawsuit. It includes a statement of the wrong or harm done to the plaintiff by the defendant and a request for

a specific remedy from the court. A complaint in a criminal case is a sworn statement regarding the defendant's actions that constitute a crime.

Coordinator	The lead person running the on-site competition for a regional competition and/or state competition.
Criminal Case	A case brought by the government, through a prosecutor, against a person thought to have broken the law. (Criminal law is a broad field of law involving action taken by the state against a person accused of committing a crime.)
Cross-Examination	When a student attorney asks the opposing team's witness a series of questions to show weakness or less believability in the witness' testimony. Questions asked on cross-examination can be leading questions and are not limited to the direct examination questioning.
Declarant	The person who made the statement.
Defendant	In a civil case, the person being sued. In a criminal case, the person accused of the crime.
Defense	The case presented by or on behalf of the party being accused or sued in a lawsuit.
Direct Evidence	The testimony of a person who asserts or claims to have actual knowledge of a fact, such as an eyewitness.
Direct Examination	When a student attorney asks one of his/her witnesses direct/open-ended questions to allow the witness to tell his/her story through a series of asked questions; questions that evoke facts from a witness.
Discussion Forum	A place to post questions online concerning the content of the Case Materials, the Competition Rules, and the competition. Once registered online with the discussion forum, it takes up to 48 hours to be approved. Teams are accountable for any changes made to Competition Rules and/or case on the discussion forum. The discussion forum closes within ten business days of a competition. Click Here for the Discussion Forum
Dispute Process	The opportunity provided to teams at the conclusion of the trial to raise a rule violation committed by a team or team member during the competition round.
Evidence	Information presented through testimony or in documents.
Exhibit	A document or other item introduced as evidence during a trial or hearing.
Floater Team	Many teams are assigned as a "floater" team so that bye rounds in a regional competition can be avoided. There are always be several floater teams identified when the regional assignments are announced. Floater

teams are teams that fall in between two or more regions and can easily travel to a different region. Floater teams should remain in constant contact with the State Mock Trial Coordinator on flexibility and the latest date a team can remain as a floater.

Forfeiting Team	A team that decides to no longer compete in the remainder of the competition. Other than an emergency, a team forfeiting a round is automatically disqualified and ineligible to compete the following school year.
Ghost Ballot	A winning ballot is awarded when there is an absence of a third scoring judge. The presiding judge determines who wins on the ghost scoresheet regardless of which team received the highest averaged total.
Ghost Scoresheet	When a third scoring judge is missing, a third scoresheet is created by averaging the cumulative scores of the two other scoresheets.
Hearsay	A statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.
Inadmissible	Cannot be admitted or received as evidence according to the Rules of Evidence.
Impeachment	To bring attention to an inconsistency or an omission in a witness' testimony.
Indictment	A written accusation by a grand jury charging a person with a crime.
Judging Panel	A group of attorney volunteers that make up of the presiding judge and the scoring panel (three scoring judges).
Jury	A group of attorney volunteers that are considered scoring judges.
Jury Charge	A set of directions or guidelines that a judge gives a jury concerning the law of the case.
Material Fact	A fact that cannot be reasonably inferred from the affidavit or exhibits in the Case Materials and that would provide one side a significant legal advantage.
Motion	Oral or written request made by a party to an action.
Non-Forfeiting Team	The team that was assigned to a trial with an opposing team that forfeited.
Objection	A formal statement opposing something that has occurred, or is about to occur, in court and seeking the presiding judge's immediate ruling on the point.

Opening Statement	The introduction of the case. It is the first time the student attorneys from each side have an opportunity to say what happened to their client and in the overall case. This opening statement includes foreshadowing what is to be proven through witness testimony and the admission of evidence.
Overall Team Performance	A score that is worth up to ten points and takes into account the overall team's civility/incivility, abusive/excessive objections, scripting, delay tactics, usage of exhibits, thematic presentation, consistency of legal arguments, and teamwork.
Overrule	A ruling made by a presiding judge when the evidence is admissible . By overruling the objection, the judge allows the question or evidence in court.
Phase	A distinct period in the trial, i.e. openings, the Prosecution/Plaintiff's Case in Chief, the Defense's Case in Chief and Closing.
Plaintiff	In a civil trial, a person who brings a case against another in a court of law.
Pleadings	A formal document in which a party to a legal proceeding sets forth or responds to allegations, claims, denials, or defenses.
Power Match	The act of pairing teams together for the next round of competition based on a previous round's results; wins, ballots, points and point spread.
Presiding Judge	The person on the judge's bench who oversees pre-trial matters, the trial process, and post-trial process. The presiding judge makes rulings that are final.
Probative Value	Evidence which is sufficiently useful / important to prove something in a trial.
Prosecution	In a criminal trial, the act or process of holding a trial against a person who is accused of a crime to see if that person is guilty.
Random Pairings	When teams are randomly drawn and paired prior to the competition day and are not paired on any criteria.
Rebuttal	The time given to a party to present contradictory evidence or arguments. Only the Prosecution/Plaintiff may offer a rebuttal.
Recess	A break provided before closing arguments allowing competing team members an opportunity to prepare their closing arguments.
Re-Cross-Examination	Questions asked that are limited to the scope of the re-direct examination.

Re-Direct Examination	Questions asked that are limited to the scope of the cross-examination.
Round	A group of trials scheduled to occur at the same time.
Rules of Evidence	Standards governing whether evidence in a civil or criminal case is admissible.
Scope	The extent of the area or subject matter that something deals with or to which it is relevant.
Scoresheet	This term is used in reference to the form on which points are recorded. Scoresheets allow for evaluation up to ten points for each individual's performance, overall team performance , and any penalties that may be assessed.
Scoring Judge	A judge who completes a scoresheet, which also may be a presiding judge under Rule 5.2 Composition of Judging Panels ; also referred to as members of the jury. All judges are volunteers.
Scoring Panel	Up to three scoring judges that may be referred to as members of the jury.
Scrimmage	After all the initial trial preparation is done, teams are allowed to arrange independent meetings to practice the trial before the scheduled competitions. Because scrimmages are independently coordinated, scrimmages do not impact any competition pairings.
Seeding	Advancing state teams are power matched for the first round at the state competition based on total wins, ballots, points, and point spread earned at their regional competitions.
Sequestration	The removal or separation of a witness from the courtroom. (not a part of Mock Trial)
Statement	A person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
Statute	A law passed by the legislative body.
Stipulation	An agreement by attorneys on both sides of a civil or criminal case about some aspect of the case.
Sustain	After an objection, a ruling made by the presiding judge when the evidence is inadmissible .
Teacher Coach	A teacher who sponsors and promotes Mock Trial, recruits/auditions students, helps students prepare for Mock Trial, works with the attorney coach, facilitates completion of paperwork for the SC Bar and the school/school district, serves as a representative for the school, serves as

	a school approved chaperone for the students, etc.
Team	A group of Mock Trial teacher coaches, attorney coaches, and students.
Team Member	A student registered to compete serving the role as an attorney, witness, timekeeper, bailiff, and/or as an alternate.
Timecard	Cards used by the timekeeper to show the time used.
Timekeeper	A student on the team responsible for fairly and accurately keeping and reporting the time during the trial presentation.
Timesheet	The form used by the timekeeper to record the times used in each phase of the trial.
Transition	When a student witness is going to or leaving from the witness stand.
Trial	A single competitive match between two teams. A formal examination of evidence before the presiding judge and scoring judges. The trial consists of opening statements from both parties, the Plaintiff's / Prosecution's Case in Chief, the Defense's Case in Chief, and the closing arguments from both parties.
Virtual Competition	A competition that is held online with teams and judges participating via Zoom.
Visitor	An individual attending the competition to view a specific team. Teams have a limited number of visitors allowed in the courtroom. Each visitor is responsible for knowing and following all the Competition Rules that apply to them.
Voir Dire	To challenge the qualifications of an expert witness by addressing questions to the witness, which is not permissible in Mock Trial.
Wild Card Team	The next highest ranking teams based on wins, ballots, points, and point spread from across the state.
Witness	A person who testifies to what he or she saw, heard, or otherwise experienced.

2021 / 2022
MODIFIED RULES OF EVIDENCE

(Section 2 of 4)

MODIFIED RULES OF EVIDENCE:

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Overview of the Updates to the Modified Rules of Evidence for **2021/22**

For the 2021/22 competition season, the Modified Rules of Evidence were modified, clarified and/or condensed. An overview of the changes are noted below as information only. The ENTIRE rule can be found in the Competition Rules section.

Rule #	Rule Name	Action Taken
501	General Rule	Communication among grand jurors and secrets of state were removed. And, communications between psychiatrist and patient was updated to "medical or mental health care providers and patients."

2021 / 2022

MODIFIED RULES OF EVIDENCE ¹

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 of Evidence are a modified version of the Federal Rules of Evidence. If there is any conflict between 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 presiding judges 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 presiding judge rules, accept the ruling with grace and courtesy.**

It is important to ensure the substance of the rule when making and defending an objection and not site the rule number only.

Rules of Evidence for use of the Middle and High School Mock Trial Competitions are included below and overrule any prior Rules of Evidence.

Anything outlined in a light grey box is something that South Carolina is providing as additional information.

ARTICLE I. GENERAL PROVISIONS

Rule 101 Scope

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

Rule 102 Purpose and Construction

These rules shall be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and ascertain the truth and secure a just determination.

¹ The applicable rules of evidence have been streamlined for the High School Mock Trial Competition.

Rule 103 Reserved

Rule 104 Conditional Admission

- (a) Reserved
- (b) The court may admit proposed evidence on the condition that the proof necessary for admission be introduced later.

Rule 105 Limited Admissibility

Evidence that is admissible to one party or for one purpose can be restricted at the discretion of the presiding judge, if requested by the opposing party. If the restriction is approved, the scoring jury is instructed accordingly.

Rule 106 Remainder of Related Writings or Recorded Statements

When a party introduces a writing or a recorded statement, the opposing party may require the introduction of additional writings or recorded statements that shall be considered at the same time to ensure fairness.

ARTICLE II. JUDICIAL NOTICE

Rule 201 Judicial Notice of Adjudicative Facts

- (a) This rule governs judicial notice of an adjudicative fact only, not a legislative fact; and
- (b) The court may judicially notice a fact that is not subject to reasonable dispute because it is a matter of mathematical or scientific certainty. For example, the court could take judicial notice that $10 \times 10 = 100$ or that there are 5280 feet in a mile.
- (c) The court must take judicial notice if a party requests it and the court is supplied with the necessary information.
- (d) The court may take judicial notice at any stage in the proceeding.
- (e) A party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed.
- (f) In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS

No Federal Rules of Evidence under Article III apply to the Mock Trial program.

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401 Test for Relevant Evidence

Evidence is relevant if:

- (a) It has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) The fact is of consequence in determining the action.

Rule 402 General Admissibility of Relevant Evidence

Relevant evidence is admissible unless these rules provide otherwise. Irrelevant evidence is not admissible.

Rule 403 Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 404 Character Evidence; Crimes or Other Acts

(a) Character Evidence:

- (1) **Prohibited Uses:** Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

Official Comment:

In other words, mention of a person's typical behavior is not admissible when trying to prove that the person behaved in a way that matches the behavior discussed in the current case.

- (2) **Exceptions for a Defendant or Victim in a Criminal Case:** The following exceptions apply in a criminal case:

- (A) A defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;

Official Comment:

In other words, once the character evidence is provided by the Defendant, the Prosecution/Plaintiff can attack these statements with character evidence that would normally be excluded as improper character evidence.

- (B) A defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:

- (i) Offer evidence to rebut it;
- (ii) Offer evidence of the defendant's same trait; and

Official Comment:

In other words, the accused in a criminal case can point out important and related character traits of the victim, such as aggressiveness, to defend him/herself. The Prosecution can then argue that the victim exhibited traits of peacefulness in the past. The Prosecution may also then argue that the defendant him/herself has exhibited aggressiveness in the past.

- (C) In a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

Official Comment:

In other words, if the charge against the Defendant is murder and the Defendant raises self-defense or otherwise alleges that the victim started the fight, then the Prosecutor may offer evidence that the victim was a peaceful person.

- (3) **Exceptions for a Witness:** Evidence of a witness's character may be admitted under

[Rule 607 Who May Impeach](#),

and

[Rule 608 A Witness's Character for Truthfulness or Untruthfulness](#),

and

[Rule 609 Impeachment by Evidence of a Criminal Conviction](#).

(b) Crimes, Wrongs, or Other Acts:

- (1) **Prohibited Uses:** Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
- (2) **Permitted Uses:** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Official Comment:

In other words, mention of a person's prior crimes, wrongs, or acts is not admissible to prove that the person acted in conformity with the prior bad acts. However, such evidence may be admissible to show motive, identity, common scheme or plan, intent, or absence of mistake or accident.

If Rule 404 is found to apply, see Rule 405.

Rule 405 Methods of Proving Character

(This rule applies only if character evidence is admissible.)

(a) Reputation or Opinion:

When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.

(b) Specific Instances of Conduct:

When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

Rule 406 Habit, Routine Practice

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

Rule 407 Subsequent Remedial Measures

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- Negligence;
- Culpable conduct;
- A defect in a product or its design; or
- A need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or — if disputed — proving ownership, control, or the feasibility of precautionary measures.

Rule 408 Compromise and Offers to Compromise (*Civil Case Only*)

(a) Prohibited Uses:

Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

- (1) Furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and
- (2) Conduct or a statement made during compromise negotiations about the claim — except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

(b) **Exceptions:**

The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409 Offers to Pay Medical and Similar Expenses (*Civil Case Only*)

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

Rule 410 Pleas, Plea Discussions, and Related Statements

(a) **Prohibited Uses:**

In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

- (1) A guilty plea that was later withdrawn;
- (2) A nolo contendere plea;
- (3) A statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
- (4) A statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) **Exceptions:**

The court may admit a statement described in [Rule 410\(a\) Prohibited Uses \(3\) or \(4\)](#):

- (1) In any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or
- (2) In a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

Rule 411 Liability Insurance (*Civil Case Only*)

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or proving agency, ownership, or control.

ARTICLE V. PRIVILEGES

Rule 501 General Rule

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

- (1) Communications between spouses,
- (2) Communications between attorney and client, and
- (3) Communications between medical or mental health care providers and patients.

ARTICLE VI. WITNESSES

Rule 601 General Rule of Witness Competency

Every person is competent to be a witness.

Rule 602 Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under [Rule 703 Bases of Opinion Testimony by Experts](#). (Also see [Rule 2.2 – Witnesses Bound by Statements](#).)

Rule 603 Oath or Affirmation

Before testifying, every witness is required to declare that the witness will testify truthfully, by oath or affirmation, by the oath provided in these materials. The bailiff swears in all witnesses at one time before opening statements as follows:

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

A video link showing the [bailiff opening court](#) can be viewed.

Visit www.scbar.org/lre and the click on the Middle School or High School Mock Trial logo on the main page. Go to *Videos for Coaches and Students* and then scroll through the video clips available.

Rule 607 Who May Impeach

Any party, including the party that called the witness, may attack the witness's credibility.

A video link showing [examples on how to impeach](#) can be viewed.

Visit www.sctbar.org/lre and then click on the Middle School or High School Mock Trial logo on the main page. Go to *Videos for Coaches and Students* and then scroll through the video clips available.

Rule 608 A Witness's Character for Truthfulness or Untruthfulness

(a) **Reputation or Opinion Evidence:**

A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

(b) **Specific Instances of Conduct:**

Except for a criminal conviction under [Rule 609 Impeachment by Evidence of a Criminal Conviction](#), extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

- (1) The witness; or
- (2) Another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

Rule 609 Impeachment by Evidence of a Criminal Conviction
(this rule applies only to witnesses with prior convictions)

(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 Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons](#), in a civil case or in a criminal case in which the witness is not a defendant; and

(B) Must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and

(2) For any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement.

(b) Limit on Using the Evidence after 10 Years:

This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.

(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation:

Evidence of a conviction is not admissible if:

(1) The conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or

(2) The conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) Juvenile Adjudications:

Evidence of a juvenile adjudication is admissible under this rule only if:

(1) It is offered in a criminal case;

(2) The adjudication was of a witness other than the defendant;

(3) An adult's conviction for that offense would be admissible to attack the adult's credibility; and

(4) Admitting the evidence is necessary to fairly determine guilt or innocence.

(e) Pendency of an Appeal:

A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

Rule 610 Religious Beliefs or Opinions

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

Rule 611 Mode and Order of Interrogation and Presentation

(a) **Control by 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.

Scope of Direct Examination: *Direct questions shall 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:

- (1) "Mr. Patterson, what did you do immediately after seeing Mr. Winstead run from the house?"
- (2) "Mr. Patterson, prior to today, have you ever met Mr. Winstead?" (Note: Although this is a "Yes" or "No" question, it is NOT a leading question because it does not suggest what the questioner wants the answer to be.

Example of a Leading Question:

"Mr. Patterson, is it not true that you knew Mr. Winstead prior to today?" (This conveys the intent of the question for the witness to answer "Yes" and is therefore improper for direct.

Example of a Question which calls for a Narrative (improper for direct):

"Mr. Patterson, tell us everything you know about Mr. Winstead."

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, but it is rare for an attorney on direct to ask a question (such as the example here) that is obviously too broad. Often, the issue does not arise until the witness goes clearly beyond what is necessary to answer the question. If that occurs, opposing counsel can object that "the witness is giving a narrative answer" (i.e., beyond what is necessary to answer the question.)

(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 and/or relevant exhibits, **including** all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness' statement and/or relevant exhibits that are otherwise material and admissible.

Cross-examination is the questioning of a witness by an attorney from the opposing side of the case. Cross-examination is not limited to direct questioning.

- (1) **Form of Questions:** *An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions tending to evoke a narrative answer shall 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 army?"*
- (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.*

A video link showing **cross-examination examples** can be viewed.

Visit www.scbare.org/lre and the click on the Middle School or High School Mock Trial logo on the main page. Go to **Videos for Coaches and Students** and then scroll through the video clips available.

(c) **Leading Questions:**

Leading questions should not be used on direct examination except as necessary to develop the witness' 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 / Recross:**

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 on recross, but such questions must be limited to matters raised on redirect examinations and should avoid repetition.

(e) **Permitted Motions:**

The only motion permissible is one requesting the presiding judge to strike testimony following a successful objection to its admission.

Official Comment:

A team may treat its own witness as “hostile” under Rule 611(c). Any witness may portray the character as “hostile” and teams may develop strategy around that portrayal. Teams are cautioned; however, that scoring judges might see this as a tactic designed to use leading questions to bolster a weaker performance and could score down accordingly. A skilled team can use this technique strategically (that is, to provide a realistic portrayal of a character or to demonstrate a lawyer’s ability to control a hostile witness) without over-relying on leading questions.

For example, a lawyer walking a weaker witness through a direct examination with leading question after leading question by calling the witness “hostile” will score lower. A lawyer who methodically challenges a hostile witness then forces an admission or other testimony with a well-timed leading question or two will score higher.

Rule 612 Writing Used to Refresh Memory

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

Rule 613 Witness’s Prior Statement

(a) **Showing or Disclosing the Statement During Examination:**

When examining a witness about the witness’s prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party’s attorney.

(b) **Extrinsic Evidence of a Prior Inconsistent Statement:**

Extrinsic evidence of a witness’s prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party’s statement under [Rule 801\(d\)\(2\) Definitions – Statements That Are Not Hearsay – An Opposing Party’s Statement](#).

Official Comment:

A cross-examining attorney may want to challenge the credibility of a witness by showing that the witness has testified in court in a way that is inconsistent with that witness’ affidavit. This tactic is called “impeaching the witness.” It may be executed by asking the witness whether s/he has ever given an affidavit inconsistent with the witness’ testimony. If the witness maintains that s/he has not testified inconsistently, or states s/he does not remember making the statement, the cross-examining attorney may choose to present the witness’s affidavit to him/her to prove the inconsistency. The attorney should ask the presiding judge’s permission to approach the witness to show him/her the affidavit (or ask if s/he has a copy on the witness stand already). If permission is granted, the attorney should direct the witness and the court to the page and line containing the inconsistency. The lawyer can read the part of the affidavit containing the inconsistency or ask that the witness do so.

As a general rule, the affidavit itself should not be admitted into evidence. One exception; however, would be where a witness testifies in a manner inconsistent with a statement made in that witness's affidavit and maintains the inconsistency even when shown the portion of the affidavit which the cross-examining attorney believes is inconsistent. Under those circumstances, the cross-examining attorney may ask to enter the affidavit into evidence to prove the contradiction to the jury. Either side can request redaction of other portions of the affidavit not relevant to the impeachment. (In Mock Trial, the presiding Judge can order that such portions "be considered redacted" without the need for actual physical redaction.)

Note, however, if a witness is impeached with an inconsistent statement in his/her affidavit and admits making the statement (either before or after being shown the affidavit), there is no need to introduce the affidavit (or any portion thereof) into evidence, and such should not be requested.

Therefore, if a witness is asked whether he or she made the statement "X" in his/her affidavit and admits it, the attorney asking the question should move on to the next question. If the witness denies making the statement or testified he/she cannot remember making the statement, the attorney may ask permission to have the witness refer to his/her affidavit. If, after having been shown his/her affidavit, the witness maintains s/he did not make that statement, the attorney may request that the affidavit be admitted into evidence.

A video link showing [how to impeach examples](#) can be viewed.

Visit www.scbart.org/lre and then click on the Middle School or High School Mock Trial logo on the main page. Go to *Videos for Coaches and Students* and then scroll through the video clips available.

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701 Opinion Testimony by Lay Witness

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) Rationally based on the witness's perception;
- (b) Helpful to clearly understanding the witness' 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 Testimony by Experts](#).

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.

Official Comment:

A witness cannot give expert opinions under [Rule 702 Testimony by Experts](#) until s/he has been tendered as an expert by the examining lawyer and recognized as such by the court. To have an expert witness admitted by the court, first ask the witness to testify as to his/her qualifications. Then ask the presiding judge that the expert witness be qualified as an expert in the field of _____. The presiding judge then asks opposing counsel if there are any objections to having the witness recognized as an expert. Either there are no objections or there is an argument as to why the witness is not qualified as an expert. The presiding judge then rules if as to whether the witness is qualified as an expert.

Prior to the court's admission of a witness as an expert, the witness cannot provide any opinions and the attorneys shall object to any attempts by an undesignated expert to render opinion testimony. Once the witness is qualified and admitted as an expert by the court, the witness can offer only opinions that are within the witness' recognized field of expertise.

Rule 703 Bases of an Expert's Opinion Testimony

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Rule 704 Opinion on Ultimate Issue

(a) **In General – Not Automatically Objectionable:**

An opinion is not objectionable just because it embraces an ultimate issue.

(b) **Exception:**

In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

Rule 705 Disclosing the Facts or Data Underlying An Expert's Opinion

Unless the court orders otherwise, an expert may state an opinion — and give the reasons for it — without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

ARTICLE VIII. HEARSAY

Rule 801 Definitions

The following definitions apply under this article:

(a) **Statement:**

A "statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) **Declarant:**

A "declarant" means the person who made the statement.

(c) **Hearsay:**

"Hearsay" means a statement that:

- (1) The declarant does not make while testifying at the current trial or hearing; and
- (2) A party offers in evidence to prove the truth of the matter asserted in the statement.

(d) **Statements That Are Not Hearsay:**

A statement that meets the following conditions is not hearsay:

(1) **A Declarant – Witness's Prior Statement:**

The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

- (A) Is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
- (B) Is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
- (C) Identifies a person as someone the declarant perceived earlier.

(2) **An Opposing Party's Statement:**

The statement is offered against a party and:

- (A) Was made by the party in an individual or representative capacity;
- (B) Is one the party manifested that it adopted or believed to be true;
- (C) Was made by a person whom the party authorized to make a statement on the subject;
- (D) Was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

- (E) Was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Official Comment:

Hearsay generally has a three step analysis:

- 1) *Is it an "out-of-court" statement?*
- 2) *If so, is it offered to prove the truth of the out-of-court statement?*
- 3) *If so, is there an exception that allows the out-of-court statement to be admitted despite the fact that it is hearsay?*

An example of hearsay would be a witness saying, "I heard Bob Smith [who is not testifying in the case] say that he saw the Defendant kill the victim." If this is offered to prove that the Defendant killed the victim, the Defendant's attorney has no way of cross-examining Bob Smith about what he saw, or whether he has a bias against the Defendant, or whether there is any other reason to disbelieve the statement. Because we cannot test the credibility (truthfulness or untruthfulness) of the substance of Bob's statement, it is untrustworthy and shall not be admitted.

An example that would not be hearsay: a witness testifies "I heard Bob Smith tell the Defendant that the Defendant's child was at the hospital and was seriously injured." If this is offered to show why the Defendant raced to the hospital, it is not a statement being offered "for the truth of the matter asserted" (i.e., it is not offered to show the child was actually injured, this is not the point), then it would NOT be hearsay. The statement is being admitted to show why someone took some action, not for the truth of the statement. (And it is irrelevant whether the statement is actually true or not.) In this instance, the issue is whether or not the statement was made (and the witness can be cross-examined on this point), not the truth of the statement.

An example that is hearsay, but which is likely an exception (and therefore might be admitted): a witness testifies "I was talking on the phone with the victim when he told me the Defendant was knocking at his door." This is hearsay; however, it likely falls under exception [Rule 803\(1\) – Present Sense Impression](#).

For the purposes of the Mock Trial competition, the exceptions to the hearsay rule which are listed herein ([Rules 803 Exceptions to the Rule Against Hearsay – Regardless of Whether the Declarant is Available as a Witness](#) and [Rule 804 Hearsay Exceptions; Declarant Unavailable](#)) can be used.

Rule 802 Hearsay Rule

Hearsay is not admissible except as provided by these Modified Rules of Evidence.

Rule 803 Exceptions to the Rule Against Hearsay – Regardless of Whether the Declarant is Available as a Witness

A video link showing the **hearsay exceptions** can be viewed.

Visit www.scbar.org/lre and click on the Middle School or High School Mock Trial logo on the main page. Go to *Videos for Coaches and Students* and then scroll through the video clips available.

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.

Examples of Then Existing Mental, Emotional, or Physical Conditions:

Emotional State: *Bob said he was scared.*

Physical State: *Jim said he had a headache.*

Mental State: *He said he was going to take the car out and see how fast it would go.*

- (4) **Statements 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) The opponent does not show that the source of information or other circumstances 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) The opponent does not show that the possible source of information or other circumstances indicate a lack of trustworthiness.

(8) Public Records and Reports:

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) The opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

(9) **Records of Vital Statistics:**

A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

(10) **Absence of a Public Record or Entry:**

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.

(11) **Records of Religious Organizations:**

Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) **Omitted**

(13) **Family Records:**

Statements of facts concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions of family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) **Omitted**

(15) **Omitted**

(16) **Statements in Ancient Documents:**

A statement in a document that is at least 20 years old and whose authenticity is established.

(17) **Omitted**

(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.

(19) Reputation Concerning Personal or Family History:

Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(20) Omitted

(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.

(23) Omitted

Rule 804 Hearsay Exceptions; Declarant Unavailable

a. Criteria for Being Unavailable.

A **declarant** is considered to be unavailable as a witness if the declarant:

- (1) Is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
- (2) Refuses to testify about the subject matter despite a court order to do so;
- (3) Testifies to not remembering the subject matter;
- (4) Cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
- (5) Is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:
 - (A) The declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or

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

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

b. The Exceptions:

The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) Former Testimony: Testimony that:

- (A) Was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and
- (B) Is now offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

(2) Statement Under the Belief of Imminent Death:

In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

(3) Statement Against Interest: A statement that:

- (A) A reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and
- (B) Is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

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

- (A) The declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or
- (B) Another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

(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.

Rule 805 Hearsay within Hearsay

Hearsay included within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

Rule 1103 Title

These rules came from the National High School Mock Trial Federal Rules of Evidence.

ARTICLE IX – IMPROPER FORM OF QUESTION

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.

Rule 902 Argumentative Questions

An attorney shall not ask a question that asks the witness to agree to a conclusion drawn by the question 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 Foundation

Exhibits are not to 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 foundation has been laid, the exhibits may still be objectionable due to relevance, hearsay, etc. "Authentic" means only that a document is what it appears to be, not that the statements contained in the document are necessarily true.

OBJECTION SAMPLE

A student attorney may object at any time to challenge a piece of evidence that goes against the Mock Trial Rules of Evidence. The student attorney wishing to make the objection shall stand, if able, state "Objection, Your Honor." and state the basis for the objection. *Example, "Objection, your Honor. Relevance."* Attorneys may not make speaking objections or provide explanation unless requested by the presiding judge. *Example of a speaking objection not permitted, "Objection, your Honor. The question about ABC is not relevant because we are here today to determine XYZ and ABC is not relevant to that."*

When an objection is made, the presiding judge asks the objecting attorney to defend his/her objection. Then the presiding judge ordinarily provides the opposing student attorney an opportunity to defend why the question is proper or the evidence is admissible. After the opposing counsel has responded, there is no more argument on that objection unless requested by the presiding judge.

The presiding judge then decides whether the objection is "**Overruled**" or "**Sustained**." If an objection is overruled (thereby allowing the question to be answered or the answer to remain in the trial record), the objecting student attorney cannot "Move to Strike" the evidence from the record. If an objection is sustained (thereby disallowing the question or the answer), the objecting student attorney should "Move to Strike" as a way to remove harmful testimony from the record. (See [Rule 4.7 \(A\) Motions](#).)

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

Following are examples of standard forms of objection:

1. **IRRELEVANT EVIDENCE**

2. **LEADING QUESTION**

(NOTE: Remember that an attorney may ask leading questions when cross-examining the opponent's witnesses.)

3. **IMPROPER CHARACTER TESTIMONY**

4. **HEARSAY**

(NOTE: If the witness makes a hearsay statement, the attorney shall say, "The witness' 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**

IMPEACHMENT SAMPLE

There are a number of ways to “impeach” or attack a witness’s credibility. For example, an attorney may ask questions to show that the witness is unreliable (e.g., the witness’s memory is vague as to important details, the witness was far away from the action, it was dark, etc.), or that the witness is biased (e.g., the witness previously expressed negative or positive feelings concerning the person about whom s/he is testifying). An attorney may also point out prior statements the witness made that are inconsistent with the testimony given from the stand (“prior inconsistent statements”), or statements that the witness omitted either from his/her affidavit or from his/her testimony on the stand (“omissions”).

When impeaching a witness based on prior inconsistent statements, it is important to keep in mind the reason for doing so. Are you trying to show that a prior statement was correct and the statement from the stand is not? Or are you simply trying to show that the witness makes inconsistent statements and his/her testimony as a whole should not be believed? The goal may dictate your line of questioning.

Following is an example of impeaching a witness based on a prior inconsistent statement:

Q: You just said you saw Mr. Jones outside the store on the day of the incident. Is that right?

A: Yes.

Q: Are you sure you saw him?

[Note: Sometimes it is good to give the witness a chance to waffle and change his/her answer. It gets the point across without having to formally impeach, which takes more time and can be cumbersome. If the witness backtracks and says maybe s/he did not see Mr. Jones, you can toy with them a little about whether they saw Mr. Jones or not, e.g. “Okay, now you did not see him. Are you sure this time?” If the witness does not back off the inconsistent statement and says yes, s/he saw Mr. Jones, continue:]

Q: Do you recall giving a sworn affidavit in this case?

A: Yes.

Q: Do you have the affidavit in front of you?

A: Yes.

Q: Is this the affidavit you previously gave in this case?

A: Yes.

Q: This is your sworn statement given under oath, correct?

A: Yes.

Q: And, that is your signature on the last page?

A: Yes.

Q: I would like to turn your attention to page __, lines __. Please read quietly along while I read aloud. You stated, “I did not see anyone outside the store.” Did I read that correctly?

A: Yes.

[Note: Depending on the witness, the facts, and what you are trying to accomplish, you can stop here, with the last statement being that the witness did not see anyone outside the store. Alternatively, you may press forward at your own risk to try to get the witness to admit they did not see Mr. Jones outside the store (if that is what you are trying to accomplish) or that the two statements are inconsistent (if that is your goal). Be careful not to give the witness an opportunity to reconcile the inconsistent statements (for example, the witness may say something like “That statement was referring to later in the day, after the incident had occurred.”)]

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