

2024 NEBRASKA HIGH SCHOOL MOCK TRIAL RULES
IN PERSON COMPETITION

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I. RULES OF THE COMPETITION

A. ADMINISTRATION

All trials are governed by the Nebraska High School Mock Trial Rules of the Competition, the Rules of Procedure, and the Federal Rules of Evidence (Mock Trial Version). Questions or interpretations of these rules are within the discretion of the Regional Coordinators and State Coordinator, whose decisions are final. Any Post-Trial Violation (Rule 37) involving a Gross Rules Violation shall be decided by the Mock Trial Commission.

1. CODE OF ETHICAL CONDUCT FOR ALL PARTICIPANTS

The Rules of the Competition (Rules), as well as proper rules of courthouse and courtroom decorum and security, must be followed. In the event of a Gross Rules Violation, the Mock Trial Commission will be contacted to determine an appropriate remedy. The Nebraska State Bar Foundation Board of Directors created the Commission (see Rule 37).

Please follow a proper sense of fairness in the competition and understand that the Mock Trial Commission possesses the discretion to impose any appropriate sanctions. Sanctions can be imposed for any breaches of decorum that affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge, or the Mock Trial Program. The sanctions may include but are not limited to an adjustment of points, disqualification, immediate exclusion from the competition, and the forfeiture of all awards.

All teams are responsible for the conduct of persons associated with their team during the competition. The team members, coaches and team supporters shall be always bound by the CODE OF ETHICAL CONDUCT (CODE). Everyone shall exhibit and act with civility, professionalism, integrity, honesty, and good sportsmanship in victory and in defeat. Showing respect for team members, coaches, supporters, opponents, volunteer judges, and Bar Foundation staff is expected.

Scouting by a team, its teachers, attorneys, students, parents or by affiliates of any other team is prohibited. No information about any previous trials may be shared with any other team/school at either the regional or state competition. To further ensure that all teams have a fair opportunity to compete on a level playing field, no teams shall practice in a courthouse where the Regional or State trials will be held.

The principal, teacher and attorney coaches, and team members are responsible for reading and understanding the Rules of the Competition and the CODE. The Principal and Coaches shall be responsible for educating team members and team supporters about the CODE and shall encourage compliance with it. All coaches are in positions of authority and should serve as positive role models for the students. Students shall not willfully violate the Rules.

If the Foundation moves to a virtual competition, each team and every team member shall consent to the Bar Foundation recording each trial via Zoom including at the State Championship.

Videotaping or audio recording at any trial is prohibited by team members, the teacher and attorney coaches or anyone else associated with a team.

All teacher and/or attorney coaches are encouraged to resolve any issues between the schools themselves before involving the State Coordinator.

Please sign the Code of Ethical Conduct Google document found on the Bar Foundation website: www.nebarfnd.org/civics-education/mock-trial

2. Emergencies

During a trial, the presiding judge has the discretion to declare an emergency and adjourn the trial for a short period of time to address the emergency. If a team is unable to participate with less than six (6) members, the judge should notify the Regional Coordinator if possible. If it is determined that an emergency exists, the presiding judge or the Regional Coordinator will decide whether the team will forfeit or whether the team may continue that trial with less than six members. A penalty may be assessed if a team continues with less than six members.

A motion for a recess may be used only in the event of an emergency. Should a recess be called, team members shall not communicate with any coaches or observers regarding the trial.

3. Most Effective Attorney Certificate and Most Effective Witness Certificate

The Nebraska State Bar Foundation's Mock Trial Program encourages coaches to teach high school students about civility and good sportsmanship. The Bar Foundation website hosts the **Most Effective Attorney Certificate** and the **Most Effective Witness Certificate**. Teams need to print these certificates to take to each trial. At the conclusion of each trial, student team members have the opportunity to select two opposing team members and present these certificates.

B. THE PROBLEM

Rule 1. The Problem

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

The problem shall consist of three (3) witnesses per side and each witness can be played by individuals of any gender. All witnesses shall be called to testify. Witnesses must be called only by their own team and examined by both sides, and they may not be recalled by either team.

Rule 2. Witness Bound by Statements

Each witness is bound by the facts contained in that witness's own statement, the Statement of Facts, if present, and/or any necessary documentation relevant to that witness's testimony. Invention of facts may be allowed, provided reasonable inference may be made from the witness's statement.

- If, during direct examination, an attorney asks a question which calls for an invention of facts, the question is subject to objection under Rule 3.
- If, during cross-examination, an attorney asks a question which calls for an invention of facts, the witness may or may not respond, so long as any response is consistent with the witness's statement or affidavit. The question is not subject to objection. See Rule 3 for further clarification.
- A witness is not bound by facts contained in other witness statements.

Rule 3. Invention of Facts

An invention of facts is best attacked through impeachment and closing arguments and is to be dealt with during the trial. The purpose of this rule is to keep the case as even as possible by not allowing either side to create an advantage by inventing facts. Since Mock Trial uses created fact situations, the witnesses may not have the knowledge of all the necessary facts. Therefore, for Mock Trial we need a rule to prevent inventions of facts that are not included in the case materials.

When an attorney objects to an invention of facts, the judge will rule to clarify the course of further proceedings. The decision of the presiding judge regarding invention of facts or evidentiary matters is final.

Rule 4. Gender of Witnesses

All witnesses are gender neutral. The preferred pronoun of a witness should be indicated on the Team Roster. Any student may portray the role of any witness.

Rule 5. Voir Dire

Voir dire examination of a witness is not permitted.

C. TEAMS

Rule 6. Team Eligibility

Each team competing in the Judge Lyle Strom High School Mock Trial Program must be comprised of students from the same school who are registered in grades 9-12 at a Nebraska public or private school, a home school or an organization offering Mock Trial as an educational activity (e.g. YMCA).

Each school is allowed to have up to four (4) Mock Trial teams.

Special permission may be granted for two schools to register as a combined team. Contact the State Mock Trial Coordinator. Exceptions on eligibility issues will be considered on a case-by-case basis.

A team that earns the right to compete at the State Championship shall be comprised of the same students (including alternates) that participated in the Regional competitions. If any student participant from the Mock Trial team is unable to compete and there are no alternates, another student may substitute for this participant. The individual acting as the substitute must be enrolled as a student at the school and cannot have served on any other Mock Trial team at that school during that competition year. Participation by an ineligible team member shall result in forfeiture of each trial in which the ineligible team member participated.

To participate in the competition, schools must register their teams by doing the following:

1. Complete and submit the Official Mock Trial Entry Form. This form is located on the Bar Foundation website at <https://www.nebarfnd.org/civics-education/mock-trial>. The form should be completed via the Google Doc link.
2. Submit the **Registration Form by Thursday, September 12, 2024.**
3. Submit electronically your team's **SIGNED Code of Ethical Conduct form by Wednesday, September 18, 2024.**
4. **The registration fee of \$75 PER TEAM is due by Wednesday, September 18, 2024.** The registration fee can be paid online via PayPal on the Foundation website or by mailing a check made payable to the **Nebraska State Bar Foundation**.

5. **There is a \$100 late fee for any registration received after the deadline.**
6. The Regional Competition will be coordinated with the Regional Coordinator(s) and the participating teams.

Rule 7. Team Composition

Teams consist of a **minimum** of six (6) and a **maximum** of nine (9) students. Only these official team members may be assigned to be an attorney, witness or serve in a timekeeper role representing the prosecution/plaintiff and defense/defendant sides. The duties of the alternate team members may be assigned at the discretion of the coaches. One official team member shall serve as a timekeeper.

Students may only participate on one team per school year.

Rule 8. Team Presentation

Teams must be prepared to present both the Prosecution/Plaintiff and Defense sides of the case, using **SIX** (6) team members per trial. For each trial, teams shall use three (3) students as attorneys and three (3) students as witnesses.

Rule 9. Team Duties

Each of the three (3) attorneys shall conduct one direct examination and one cross-examination. In addition, one attorney shall present the opening statement and a different attorney shall present the closing argument.

An Opening Statement and a Closing Argument must be given by both sides unless there is an emergency. See Emergencies.

The attorney who will cross-examine a particular witness is the only one permitted to make objections during the direct examination of that witness. The attorney who questions a particular witness on direct examination is the only person who may make objections during cross-examination of that witness.

Each team must call three (3) witnesses. Witnesses shall be called only by their own team. Witnesses shall be examined by both teams, and witnesses may not be recalled by either team.

Rule 10. Team Roster

The Team Roster form must identify the gender of each witness so that references to such parties may be made using the preferred pronoun. Prior to every trial, teams must exchange Team Rosters and provide all volunteer judges with a Team Roster. This electronic form can be found on the Bar Foundation website - <https://www.nebarfnd.org/civics-education/mock-trial-program/mock-trial-2024>

D. THE TRIAL

Rule 11. Courtroom Decorum

Mock Trials are meant to simulate real trials. Participants should act and dress accordingly.

Rule 12. Courtroom Setting

The Plaintiff/Prosecution team shall be seated closest to the jury box. No team shall rearrange the courtroom.

Rule 13. Pre-Trial Conferences

Each Mock Trial should begin with a pretrial conference. Mock Trial student attorneys may ask the presiding judge to clarify Rules of Procedure or Rules of Evidence.

Rule 14. Stipulations

The assigned Prosecution/Plaintiff's attorney opening statement shall offer any stipulations into evidence before beginning the opening statements.

Rule 15. The Record

The stipulations, indictment and charge to the jury shall not be read into the record.

Rule 16. Swearing In of Witnesses

Witnesses shall be sworn in, either individually or as a group, by the presiding judge, using the following oath:

"Do you promise that the testimony given will faithfully and truthfully conform to the facts and rules of the Mock Trial Competition?"

Rule 17. Trial Sequence and Time Limits

The trial sequence shall be as follows:

1. Prosecution/Plaintiff's opening statement
2. Defense's opening statement
3. Prosecution/Plaintiff's direct examination and Defense's cross-examination of Prosecution/Plaintiff's three (3) witnesses
4. Defense's direct examination and Prosecution/Plaintiff's cross-examination of Defense's three (3) witnesses
5. Prosecution/Plaintiff's closing argument
6. Defense's closing argument
7. Prosecution/Plaintiff may reserve a portion of its closing argument time for rebuttal if it does so at the beginning of its closing argument. The Prosecution/Plaintiff's rebuttal, if any, is limited to the scope of the Defense's closing argument.

Direct and Redirect Examination

Attorneys shall not ask questions calling for an invention of facts and witnesses shall not provide answers that involve an invention of facts. Attorneys for the opposing team may refer to Rule 3 in a special objection, such as: "Objection, Your Honor. The question calls for an invention of facts."

Cross and Recross Examination

The invention of facts may only be allowed on cross or recross examination and only if the question being asked calls for facts that are not included in the case materials. If a witness is asked a question calling for an invention of facts, the witness may respond:

1. "I do not know the answer to that question because that information is not contained in the Nebraska Mock Trial case materials." OR
2. With any answer which is consistent with the witness's affidavit and other substantive issues of the case.

An answer that is contrary to the witness's affidavit may be impeached.

Time Limits

1. Each team shall have a total of 10 minutes for the Opening Statement and Closing Argument. For example, a 3-minute opening and a 7-minute closing.
2. Each team shall have a total of 25 minutes for Direct and Redirect Examination.
3. Each team shall have a total of 20 minutes for Cross and Recross Examination.

Attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial, except as allowed by this rule.

Rule 18. Timekeeping

Time limits are mandatory and shall be enforced by the presiding judge. Time for objections or extensive questioning from the judge shall NOT be counted as part of a team's allotted time. Time does not stop for introduction of exhibits. Each team shall have its own timekeeper.

Placement of Timekeepers - Non-participating team members serving as the timekeeper(s) may sit in the first row of the jury box if space is allowed. Timekeepers shall not sit by the performance judges and shall not look at any score sheets. Each team's timekeeper(s) shall sit beside the competing team's timekeeper(s). A student not serving as a timekeeper is prohibited from sitting in the jury box.

- If a team has only six (6) official members, it must designate one (1) or more of its witnesses to serve as a timekeeper in each round.
- Students keeping time may use stopwatches or cellular phones. **Any cellular phone used for timekeeping must be kept in airplane mode and silenced during the duration of the trial.**

Timekeeper(s) may verbally communicate the remaining time to their teammates during a recess.

Three (3) Sets of Timecards: **The Bar Foundation requires all Mock Trial teams and timekeepers to use the official timecards. These timecards will be utilized on an annual basis.** The timecards are specifically for opening/closing, direct examinations and cross-examinations and provide the specific time increments. Modification of intervals is not permitted. Note that the timecards start in an ascending order (lowest to highest) and build to the maximum number of minutes in that section. In addition, as the timecards begin to reach the last minute allowed in that phase, the timecards change from white to yellow, and the last timecard is in red showing the maximum amount of time available and "STOP."

- Opening/Closing Timecards: The timecards are provided in the following increments: 1:00, 2:00, 3:00, 4:00, 5:00, 6:00, 7:00, 8:00, 9:00, 9:15, 9:30, 9:45, 10:00/STOP.
- Direct Examination Timecards: The timecards are provided in the following increments: 2:00, 4:00, 6:00, 8:00, 10:00, 12:00, 14:00, 16:00, 18:00, 20:00, 21:00, 22:00, 23:00, 24:00, 24:15, 24:30, 24:45, 25:00/STOP.
- Cross-Examination Timecards: The timecards are provided in the following increments: 2:00, 4:00, 6:00, 8:00, 10:00, 12:00, 14:00, 16:00, 18:00, 19:00, 19:15, 19:30, 19:45, 20:00/STOP.

Timekeepers are responsible for fairly and accurately keeping, reporting, and recording the time for all participants during the trial presentation.

The decisions of the presiding judge regarding the resolution of time disputes are final. No time disputes will be entertained **after** the trial concludes.

Rule 19. Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the presiding judge, the scoring judges may determine individually whether to deduct points because of the overrun in time.

Time Discrepancy - If there is more than a 10 second discrepancy between the teams' timekeepers, the timekeepers must notify the presiding judge of the discrepancy. Any discrepancies between timekeepers of less than 10 seconds will not be considered.

Rule 20. Prohibited Motions

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

Rule 21. Sequestration & Exclusion

Teams may not invoke the rule of sequestration or exclusion of witnesses.

Rule 22. Bench Conferences

Bench conferences are not permitted in either in-person or virtual competitions. Objections are deemed to have occurred at the sidebar.

Rule 23. Enlargements, Costuming, Props and Accents

During the trial, teams may refer only to materials included in the Mock Trial case packet. No physical evidence, illustrative aids, enlargements, props, or costumes are permitted. Costuming is defined as hairstyles, clothing, accessories or make up which are case specific. An accent is not considered costuming.

No exhibits may be modified before trial. An exception to this Rule is if a student has a visual impairment. Please see Rule 33.

Rule 24. Trial Communication

A. Team Members

Team members are defined as the three (3) student attorneys, three (3) student witnesses and up to three (3) alternates, which include the timekeeper(s). Non-participating alternates who are not serving as a timekeeper shall not talk to, signal, electronically communicate with, or coach their teams during trial.

It is prohibited for any team member to communicate with a witness while that witness is testifying other than through the course of that witness's questioning. Disruptive communication is not allowed.

Signaling of time by the team's timekeeper(s) shall not be considered a violation of this Rule. Refer to Rule 18.

During the trial, communication of any kind between any team member and a teacher and or attorney coach is prohibited.

Only team members participating in a round may sit inside the bar and communicate with each other.

B. Coaches

Teacher coaches and attorney coaches shall not talk to, signal, electronically communicate with, or coach their teams during trial.

This Rule remains in force during any emergency recess.

Rule 25. Viewing a Trial

Regional Trials

1. Please check with the Regional Coordinator(s) about observers viewing in-person trials.
2. All coaches and observers shall turn off their cameras and mute the audio on all electronic devices. Videotaping or audio recording is **prohibited** by any team member, the teacher and attorney coaches and observers.
3. It is prohibited for team members, and anyone affiliated with a specific team to contact students, teacher, and attorney coaches from any other team in any manner to obtain information about an opponent. This prohibition includes, without limitation, any form of personal communication, voice/telephone communication, and/or electronic communication, including electronic mail, instant messaging and communication or messaging through social media sites.
4. Teacher Coaches, attorney coaches, and observers must remain outside the bar in the spectator section of the courtroom.
5. No scouting.

State Championship

The Official Team Members, teacher and attorney coaches are not allowed to watch other teams. Exceptions to this Rule may be authorized by the State Coordinator.

Rule 26. Videotaping and Photography

Regional Trials -- See Rule 25.

A school student photographer from either team may be allowed to take photos if agreed to by both teams. Videotaping or audio recording is prohibited.

Due to school district privacy regulations, there can be no video or audio recording done except by the Bar Foundation. If any team records, posts or shares a video recording, this team shall be disqualified from the Regional and State competition.

Rule 27. Jury Trial

The case shall be tried by a jury; arguments are to be made to the presiding judge and scoring judges.

Rule 28. Standing During Trial

Based on the Rule 4.16 of the National High School Mock Trial Competition Rules all attorneys shall stand when addressing the court or the jury, including opening statements, closing arguments, direct and cross-examination, and for the making of objections unless excused by the presiding judge. Direct and cross-examination may be conducted from a counsel table, a podium, or with leave of the

court, from any place in the well of the court. Counsel shall obtain permission from the court before approaching a witness.

Witnesses shall be seated for their direct and cross-examinations. Witnesses are prohibited from using notes (paper or electronic) during their examination.

Rule 29. Objection During Opening Statement or Closing Argument

No objections may be raised during opening statements or closing arguments.

If a team believes an objection would have been warranted during the opposing team's opening statement or closing argument, the opposing attorney for that segment may, following the opening statement or closing argument, object and provide a basis for the objection. The opposing team is then allowed to respond to the objection. **The presiding judge shall not rule on this "objection."** Scoring judges shall weigh the "objection" individually for purposes of determining their scores.

Rule 30. Objections

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

Teams are not precluded from raising additional objections that are available under the Rules of Evidence.

Rule 31. Filibustering or Deliberate Time Wasting

A witness may be permitted to give a brief, responsive answer other than a simple "yes" or "no" to questions on cross-examination, consistent with common trial practice. No witness may provide non-responsive or narrative answers on cross-examination in order to consume the other team's cross-examination time. The presiding judge is encouraged to control any effort at marginally responsive, narrative "filibustering" or "deliberate time wasting."

Rule 32. Procedure for Introduction of Exhibits

As an example, the following steps effectively introduce evidence during a trial.

1. The judging panel will have the Case Materials, which includes all exhibits, before the trial. Each witness shall have all case materials available and in their possession during their testimony, however, may only refer to the case materials when prompted by an examining attorney.
2. All evidence shall be pre-marked as exhibits.
3. Attorneys will identify the exhibit by number and request the Court's permission to show opposing counsel before showing the exhibit to the witness.
4. The attorney will state a phrase to the effect of "I now refer to what has been marked for identification as Exhibit No. _____. Would you identify it please?" Witnesses should only answer to identify it.
5. Ask the witness questions that are offered to prove the admissibility of the exhibit. These questions will lay the foundation and or the relevance and materiality of the exhibit.
6. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. ___ into evidence."
7. Presiding Judge: "Is there an objection?" (If proper foundation has not been laid, opposing counsel should object at this time.)
8. Opposing Counsel: "No, your Honor," or "Yes, your Honor." (State objection.)
9. Presiding Judge: "Is there any response to the objection?" (Counsel may respond.)
10. Presiding Judge: "Exhibit No. ___ is/is not admitted."
11. Exhibits or other documents will be deemed not to have been shown to the jury unless they are admitted into evidence and formally published to the jury. Publication to the jury is at the presiding judge's discretion.

Rule 33. Use of Notes and Exhibits

Attorneys **may** use notes in presenting their cases. Witnesses are **not permitted** to use notes while testifying during the trial. Attorneys may consult with each other at the counsel table verbally or through the use of notes. **The use of laptops or other electronic devices is prohibited.**

Exhibits may not be enhanced or enlarged without permission from the State Coordinator. Teams may, but are not required to, use lamination or page sleeves for the exhibits or other case materials. If teams choose to laminate a page or use page sleeves, teams will ensure that each page is clean prior to trial.

Rule 34. Marking Documents at Trial

No trial exhibits may be modified prior to the trial exhibit being admitted. Once a trial exhibit has been admitted, attorneys and witnesses may in real time highlight, underline, zoom in, or otherwise mark (e.g., circling, drawing an arrow, or making another, similar mark) the admitted exhibits during direct or cross examination, either physically or electronically. No other alterations, animations, or enhancements to the trial exhibit are allowed except as allowed under Rule 33.

Rule 35. Redirect and Recross

Redirect and recross examinations are permitted, but any redirect and recross examination is limited in scope to matters raised in cross examination and redirect examination, respectively (National High School Mock Trial Championship Rule 4.22). Re-redirect and re-recross examination are **not** allowed.

Rule 36. Scope of Closing Arguments

Closing arguments must be based on the actual evidence and testimony presented during the trial.

Rule 37. Post-Trial Violation

All objections must be handled during the actual trial. Appeals are not permitted *per se*; however, a **substantial** violation is handled in the following manner:

- A. After closing arguments are completed and the trial has concluded, the presiding judge will ask, *“Does either team have serious reason to believe that a material violation of any rule has occurred during this trial? I will allow up to two (2) minutes, during which time any protest or objection may be brought to my attention by a team attorney. The team attorneys may communicate only with performing team members (witnesses and timekeeper) involved in this round. Team attorneys shall not communicate in any way with the teacher and/or attorney coaches.”*

THE FOLLOWING ARE NOT SUBSTANTIAL VIOLATIONS AND SHALL NOT BE CONSIDERED:

- 1: Motions for directed verdict or dismissal of the case are not permitted.
- 2: Objections that could have been raised during the trial, including evidentiary objections, cannot be raised at this time.
- 3: Objections to any of the presiding judge’s rulings.

If there is a violation, then one of the team attorneys will state the violation and the grounds for it. The judge shall solicit a response from the other team and/or inquire further into the facts. All violations shall be made before the presiding judge adjourns the trial.

The presiding judge does not announce a finding. The presiding judge and the scoring judges may consult with each other in private after the trial has concluded.

- B. If neither team has any Post Trial Violation, then the two-minute limit may be waived by unanimous consent. The presiding judge will then adjourn the trial.
- C. Material Rule Violation - If a majority of the judging panel determines that there has been a material violation of the competition rules that affected the fairness of the trial, five (5) points shall be deducted from the offending team’s total score on each scoresheet. An example of a material rule violation would be a team going over its time limit for closing arguments by more than 15 seconds without prior permission of the presiding judge.
- D. Gross Rule Violation - In the event the team raises a violation that the majority of the judging panel believes is more serious than a five-point violation, the student attorneys are asked to verbally describe the issue in as much written detail as possible on the Gross Rule Violation Form. The Gross Rule Violation Form is included in the Case Materials and on the Bar Foundation website. An example of a gross rule violation would be communication between team members and their teacher or attorney coach, whether through signals, notes, or electronically.

A Gross Rule Violation is referred to the **Nebraska State Bar Foundation’s Mock Trial Commission**, which is comprised of seven Mock Trial volunteers (no active attorney coaches). The Commission is sent all the details, and asked to construct an appropriate remedy, up to and including disqualification.

- E. ALL DECISIONS FROM THIS PROCESS ARE FINAL AND SHALL NOT BE SUBJECT TO ANY FURTHER APPEAL.
- F. Power Matching is not subject to any appeal.

E. JUDGING

Rule 38. Decisions

All decisions of the judging panel are **FINAL** except for a violation that falls under Rule 37.

Rule 39. Composition of Judging Panel

The volunteer judging panel shall consist of one presiding judge and two scoring judges, all of whom shall complete an individual score sheet. No trial shall proceed without three (3) volunteer judges, unless one volunteer judge is unavoidably, unexpectedly absent. In this situation, the other two (2) judges may proceed to score the trial.

If a volunteer judge is absent, inform the Regional Coordinator.

If an emergency impacts the presiding judge, a designated scoring judge will serve as the presiding judge.

During any recess under this Rule, the teams, whenever possible, should remain in their appropriate positions until the round resumes.

The State Championship trial may have a panel of five to seven jurors (volunteer Mock Trial judges) at the discretion of the State Coordinator.

Rule 40. Score Sheets and Ballots

The term "ballot" refers to the score sheets and the decision made by the presiding and the scoring judges as to which team made the best presentation in the trial. Score sheets refer to the form on which points are recorded and are to be completed individually by all three (3) judges. Scoring judges are **not** bound by the rulings of the presiding judge. The team that earns the highest points on an individual performance judge's score sheet is the winner of that ballot. The team that receives the majority of the three (3) ballots wins the trial.

The Regional Coordinator(s) determines the release of the scoresheets to the teams.

During the State Championship, Power Matching is used to determine the pairings. Power Matching considers the following: 1) win/loss record, 2) number of ballots received for each trial and 3) cumulative points. The only time the Point Spread Against Opponents is used is if two teams tie in the rankings with the win/loss record, the total number of ballots received and the cumulative points. All teams will switch sides of the case during the State Championship. Teams will receive copies of their score sheets at the conclusion of the State Championship.

F. DISPUTE RESOLUTION

Rule 41. Reporting a Rule Violation - Inside the Bar

Alleged Rule violations that involve students competing in a trial and occur during the trial should be brought to the attention of the presiding judge by a student attorney through an objection at the

time of the alleged violation. **The presiding judge shall rule on the objection and the trial shall continue.**

During this process, all communication between the team members and the teacher and or attorney coach is prohibited.

Rule 42. Reporting of Alleged Rule Violation - Outside the Bar

Disputes that involve people other than student team members and occur outside the bar during a trial round may be brought exclusively by the teacher or attorney coaches. Such disputes must be made promptly to the appropriate Regional Coordinator and State Coordinator who will ask the complaining party to complete a Dispute Resolution Form. The completed form will be emailed to the Regional Coordinator and State Coordinator. The State Coordinator will then a) notify all pertinent parties; b) allow time for a response, if appropriate; and c) rule on the complaint. The State Coordinator will notify all pertinent parties of the decision.

II. RULES OF PROCEDURE

The Nebraska Rules of Procedure are based on the Rules of the National High School Mock Trial Competition.

A. WRITTEN FEEDBACK

Rule 43. Optional Feedback Form for Volunteer Judges

Judges may provide additional feedback on the electronic Feedback Form on the Foundation website.

Judges shall **not** inform the students of the score sheet results.

Rule 44. Proposed Suggestion Form for Teacher and Attorney Coaches

The Proposed Suggestion Form can be found on the Bar Foundation website. This is only available to teachers and or attorney coaches. This form must be submitted to the Nebraska State Bar Foundation's Executive Director. Coaches should describe the proposed suggestion in a maximum of 100 words. The suggestion(s) will be carefully considered and brought before the Mock Trial Commission. Based upon the Commission's recommendation, the suggestion will be accepted or denied. All suggested Rule changes will most likely be considered over the summer.

Federal Rules of Evidence (modified)

In American trials, complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the mock trial team to know the National High School Mock Trial Rules of Evidence and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses.

For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence and its numbering system. Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure. Text in italics or underlined represent simplified or modified language.

Not all judges will interpret the Rules of Evidence (or procedure) the same way, and mock trial attorneys should be prepared to point out specific rules (quoting, if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate.

The Mock Trial Rules of Competition and these modified Federal Rules of Evidence govern the Judge Lyle Strom High School Mock Trial Competition.

ARTICLE I. – GENERAL PROVISIONS

Rule 101. Scope

These National High School Mock Trial Rules of Evidence govern the trial proceedings of the National High School Mock Trial Championship.

Rule 102. Purpose and Construction

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes

If the court admits evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.

Rule 106. Remainder of or Related Writings or Recorded Statements

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part — any other writing or recorded statement — that in fairness ought to be considered at the same time.

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.
- (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:
 - 1) may take judicial notice on its own; or
 - 2) must take judicial notice of a party requests it and the court is supplied with the necessary information.

- (d) The court may take judicial notice at any stage of the proceeding.
- (e) On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.
- (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 – NOT APPLICABLE

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.
 - (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;
 - (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; and
 - (ii) offer evidence of the defendant’s same trait; and

- (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.
- (3) Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 607, 608, and 609.
- (b) Other 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.

Rule 405. Methods of Proving Character

- (a) **By 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) **By 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 Offers and Negotiations

- (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

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)(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

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;
- (3) communications between medical or mental health care providers and patient.

Rule 509. Secrets of state and other official information; general rule of privilege; who may claim privilege; procedure; effect of sustaining claim.

(1) The government has a privilege to refuse to give evidence and to prevent any public officer from giving evidence as to communications made by or to such public officer in official confidence when the public interest would suffer by the disclosure.

(2) The privilege may be claimed by the public officer sought to be examined, or by the chief officer of the department of government administering the subject matter which the evidence concerned. The required showing may be made in whole or in part in the form of a written statement. The judge may hear the matter in chambers, but all counsel are entitled to inspect the claim and showing and be heard thereon. The judge may take any protective measure which the interest of the government and the furtherance of justice may require.

(3) If the circumstances of the case indicate a substantial possibility that a claim of privilege would be appropriate but has not been made because of oversight or lack of knowledge, the judge shall give or cause notice to be given to the officer entitled to claim the privilege and shall stay further proceedings a reasonable time to afford opportunity to assert a claim of privilege.

(4) If a claim of privilege is sustained in a proceeding to which the government is a party and it appears that another party is thereby deprived of material evidence, the judge shall make any further orders which the interests of justice require, including striking the testimony of a witness, declaring a mistrial, finding against the government upon an issue as to which the evidence is relevant, or dismissing the action.

ARTICLE VI. – WITNESSES

Rule 601. General Rule of 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.

Rule 607. Who May Impeach A Witness

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

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, 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

- (a) **In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:
 - (1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
 - (A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and
 - (B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and
 - (2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement.
- (b) **Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.
- (c) **Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:
 - (1) the conviction has been the subject of a pardon, annulment, certificate of

- rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or
- (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.
- (d) **Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:
- (1) it is offered in a criminal case;
 - (2) the adjudication was of a witness other than the defendant;
 - (3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and
 - (4) admitting the evidence is necessary to fairly determine guilt or innocence.
- (e) **Pendency of an Appeal.** A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

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 the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
 - (1) make those procedures effective for determining the truth;
 - (2) avoid wasting time; and
 - (3) protect witnesses from harassment or undue embarrassment.
- (b) **Scope of cross examination.** The scope of the cross examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement and/or 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 exhibits that are otherwise material and admissible.
- (c) **Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:
 - (1) on cross-examination; and
 - (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

Rule 612. Writing Used to Refresh a Witness's Memory

- (a) Scope. This rule gives an adverse party certain options when a witness uses a writing to refresh memory:
 - (1) while testifying; or
 - (2) before testifying, if the court decides that justice requires the party to have those options.
- (b) Adverse Party's Options. An adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony.

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).

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's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Rule 702. Testimony by Experts

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and
- (b) the testimony is based on sufficient facts or data.

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.** “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
- (b) **Declarant.** “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:
 - (i) 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

(ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or

(C) identifies a person as someone the declarant perceived earlier.

(2) **An Opposing Party's Statement.** The statement is offered against an opposing 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 by 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).

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these Rules.

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

The following are not excluded by the hearsay rule, regardless of whether the declarant is available as a witness:

(1) **Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) **Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(3) **Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to

prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

(4) **Statement Made for Medical Diagnosis or Treatment.** A statement that:

(a) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and

(b) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

(5) **Recorded Recollection.** A record that:

- (a) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;
- (b) was made or adopted by the witness when the matter was fresh in the witness's memory; and
- (c) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

(6) **Records of 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 the method or circumstances of preparation indicate a lack of trustworthiness.

(7) **Absence of 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 indicated a lack of trustworthiness.

(8) **Public Records.** A record or statement of a public office if:

- (a) it sets out:
 - (i) the office's activities;
 - (ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law enforcement personnel; or
 - (iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and
- (b) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

(10) **Absence of a Public Record.** Testimony that a diligent search failed to disclose a public **record** or statement if the testimony or certification is admitted to prove that:

- (a) the record or statement does not exist; or
- (b) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

(16) **Statements in Ancient Documents.** A statement in a document that was prepared before January 1, 1998, and whose authenticity is established.

(18) **Statements in Learned Treatises, Periodicals, or Pamphlets.** A statement contained in a treatise, periodical, or pamphlet if:

- (a) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
- (b) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(21) **Reputation Concerning Character.** A reputation among a person's associates or in the community concerning the person's character.

(22) **Judgment of a Previous Conviction.** Evidence of a final judgment of conviction if:

- (a) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;
- (b) the conviction was for a crime punishable by death or by imprisonment for more than a year;
- (c) the evidence is admitted to prove any fact essential to the judgment; and
- (d) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

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 806. Attacking and Supporting the Declarant’s Credibility

When a hearsay statement — or a statement described in Rule 801(d)(2)(C), (D), or (E) — has been admitted in evidence, the declarant’s credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant’s inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

Rule 807. Residual Exception

Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in Rule 803 or 804:

- (1) the statement is supported by sufficient guarantees of trustworthiness—after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and
- (2) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.

ARTICLE IX. – AUTHENTICATION AND IDENTIFICATION – NOT APPLICABLE

ARTICLE X. – CONTENTS OF WRITING, RECORDINGS AND PHOTOGRAPHS – NOT APPLICABLE

ARTICLE XI. – OTHER

Rule 1103. Title

The Mock Trial Rules of Competition and these Nebraska High School Mock Trial Rules of Evidence govern Nebraska High School Mock Trial competition.