



OHIO CENTER  
FOR LAW-RELATED  
EDUCATION

Partnering with Teachers  
to bring Citizenship to Life

41ST ANNUAL



20TWENTY-FOUR

Ohio

- HIGH SCHOOL -

MOCK  
TRIAL



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ESPINOSA

OCLRE is sponsored by the Supreme Court of Ohio, the Ohio Attorney General's Office, the Ohio State Bar Association,  
and the American Civil Liberties Union of Ohio Foundation.  
The Ohio Mock Trial Competition is made possible in part by a grant from the Ohio State Bar Foundation.

## 2023 RULES OF COMPETITION

### I. Team Structure

#### a. Team Roles

- i. A mock trial team may be a school or a community team and consists of a minimum of five to a maximum of eleven students (including alternates) on the official roster from the same school (if the team is affiliated with a school), a team advisor, and a legal advisor.
- ii. A community team is a mock trial team consisting of students from a single school or multiple schools which do not sponsor a mock trial team. A community team may only exist with the approval of OCLRE
- iii. Each team must have two attorneys (two different students), two witnesses (two different students), and a timekeeper/bailiff, playing Prosecution and Defense sides of the case. If for any reason, including illness or other commitments, a team drops below the minimum number of students (five), the team will forfeit its right to continue in the competition. This is without exception.
- iv. An individual student can be listed and serve on only one team. Members of the team must be listed on the Official Team Roster. The form to submit your Official Team Roster is available on the OCLRE website.  
**Only those students listed on the Official Team Roster may participate in District, Regional and State Competitions.**

#### b. Student Roles

- i. A student may play one role per side. Students may change roles when presenting the other side of the case. The roles are as follows:

<u>Prosecution</u>	<u>Defense</u>
Attorney	Attorney
Attorney	Attorney
Witness	Witness
Witness	Witness
Timekeeper	Timekeeper
Bailiff	

These roles may be filled by the same student, or they may be filled individually.

Each team must provide a timekeeper during the trial, and the Prosecution must provide a bailiff. The same student may fill the role of timekeeper and bailiff for the prosecution, or each role may be filled individually. Each team must call and question two witnesses. Each team must use two attorneys for each side played. Each attorney must conduct a direct AND a cross-examination and an opening statement OR closing argument. Only the attorney who conducts the examination of a witness may raise and respond to objections during the opposing counsel's examination of that witness.

- ii. Each timekeeper must use a stopwatch and the timekeeper's sheet provided in this Case File. Timekeepers should display their timecards in such a way that all participants can see them. Timekeepers may use the timecards provided in the competition manual or teams may create their own.
  1. If a team creates its own timecards, the cards must be on paper not larger than 8 1/2 by 11 inches, must not be distracting, and must

display time increments identical to the increments set forth on the timecards in the competition manual.

- iii. The student presentations should be the work product of the students themselves, guided by team advisor(s) (see below) and legal advisor(s), if any. It is important that presentations be the students' work rather than having students simply memorize the words prepared by an adult.
- iv. OCLRE can, upon request, make revisions to the materials and/or competition format to accommodate a student with an I.E.P. and/or 504 plan.

c. Team Advisors

- i. Teams must be guided by an adult team advisor. OCLRE believes the teams should be teacher-driven to ensure that educational standards are met.
  1. For teams associated with a school, the team advisor must be authorized by the school (e.g., teacher, coach, counselor, designated parent, etc.).
- ii. Team advisors are responsible for:
  1. Completing all required forms for registration and competition.
  2. Submitting any errata or competition questions to the Mock Trial Coordinator.
  3. Serving as the chaperone for the team (or designating a substitute) at all levels of competition.
    - a. Students will not be permitted to participate in any OCLRE sponsored events without an approved, rostered adult chaperone.
  4. Responding to requests for information from OCLRE and otherwise serving as the point of contact for all OCLRE communications.
    - a. OCLRE will **not** communicate with multiple advisors for one team.
    - b. OCLRE identifies the point of contact based on the individual completing the case materials order form and the team registration form.
- iii. Teams may also have a legal advisor, though one is not required. OCLRE strongly suggests utilizing a legal advisor to provide students with an in-depth understanding of the law and its role in democracy.
  1. Teams seeking a legal advisor may contact OCLRE for assistance in finding a qualified volunteer.
  2. A legal advisor may serve as an advisor for more than one school/team if both of the following conditions are met:
    - a. All team advisors involved are aware of the arrangement.
    - b. All teams acknowledge and accept the possibility that the legal advisor's teams may face each other at competition.
- iii. All adult advisors must be listed on the Official Team Roster for the team.
- iv. Adults advising the team should serve as guides for the students, but all work products should be the exclusive work of the students on the team.

**Deleted:** The timekeepers **must** use ONLY the timing increments outlined in this Case File, timekeeper's sheet and two stopwatches. The timekeepers should show the timecards in such a way that all participants can see them. ¶  
Timekeepers may use the timecards provided in this Case File or teams may create their own. Timecards created by teams must be legible by all participants, on paper not to exceed 8 ½ by 11-inches, and not be distracting. ¶

## II. Required Forms

- a. Registration
  - i. An official Competition Registration Form and registration fee for each team must be submitted through the OCLRE website by **Friday, November 17, 2023**.
  - ii. A confirmation will be sent from OCLRE to the email address on the registration form.
  - iii. If the Competition Registration Form is received by OCLRE after **Friday, November 17, 2023**, the team will compete on a space-available basis and will incur a late registration fee of \$40. If no space becomes available, the entire registration fee will be returned to the team.
- b. Withdrawing a team from competition
  - i. To withdraw a team, a team advisor must complete the drop form found on the OCLRE website.
  - ii. Teams that withdraw by the registration deadline (*November 17*) will receive a full refund.
  - iii. Teams that withdraw *after* the registration deadline (*November 17*) but *before* the withdrawal deadline (*December 15*) will receive a refund of their team registration fee minus a \$40 administrative fee.
  - iv. Teams that withdraw after the withdrawal deadline (*December 15*) will **not** receive a refund.
- c. Roster
  - i. A team roster is required to complete the registration process. Team rosters must be submitted through the OCLRE website by **Friday, January 19, 2024**, for a team to be assigned to a competition site.
  - ii. No roster additions/substitutions will be permitted for ANY reason after the District Competition occurring on **Friday, January 26, 2024** though team advisors are able to drop team members if necessary.
  - iii. Although the team members must remain the same for the District, Regional and State Competition, the members may change the roles they play. It is strongly suggested that a school submit a complete roster of eleven team members to ensure alternates are available.

## III. Eligibility

- a. All students are eligible to compete on a team if they have been enrolled in their school during the academic year in which the competition occurs and have not yet graduated.
- b. A student attending a career/technical, or “magnet” school that sponsors a team whose home school also sponsors a team may participate on either, but not both, teams.
- c. A student at a school which does not have a team may compete on a team at another area school or join a community program with permission from OCLRE.
- d. Each school may register a **maximum** of ~~three~~ teams. Every effort will be made to accommodate ~~third~~ teams; however, schools fielding more than one team may be required to compete outside their home county and/or at more than one competition site.
- e. A student from a school that has a team may compete on a community team provided that no more than 50 percent of the students on the community team are from a school with a team. No student may participate on both a school and a community team.

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#### IV. Competition Structure

- a. Rules for All Levels of Competition
  - i. Competition consists of two trials at Districts, two trials at Regionals and at least one trial at States.
  - ii. Teams will be placed at a competition site based on travel distance and capacity. Schools with a travel restriction that would prevent them from leaving their home county must indicate their restriction on their registration form. OCLRE will make every effort to honor valid travel restrictions.
    1. Schools fielding more than one team may not apply for travel restrictions.
    2. Schools fielding more than one team may be required to “split” between sites.
  - iii. OCLRE will attempt to provide teams with side playing first information no earlier than two days before the District, Regional and State Competitions. This information will be posted on the OCLRE website. No side playing first requests will be considered for any reason. Be aware that OCLRE may make changes to side playing first, up until the start of the trial, without notice due to unforeseen circumstances (e.g. the addition or drop of teams, weather, etc.).
  - iv. At the **District Competition**, teams will be matched at random with the exception that schools with a total of two teams shall not be paired against themselves.
  - v. All teams at the Regional Competition will be matched at random. If two matched teams previously faced each other during the District Competition, the teams will play the opposite side of what they played when they faced each other at the District Competition.
  - vi. All teams at the State Competition will be matched at random. If two matched teams faced each other during an earlier round of the State Competition, the teams will play the opposite side of what they played in the previous trial.
  - vii. No requests for assignments, pairings, or side-playing first will be accepted for any level of competition.
  - viii. Scrimmage arrangements are the responsibility, and at the discretion of, the team advisor. This may mean that if a team scrimmages a team in the same area, they could meet again in the competition.
  - ix. If possible, no more than 50 percent of teams at a District or Regional Competition site will be from the same school.
    1. If any one school would compose more than 50 percent of a District or Regional Competition site, one or more teams from that school may be selected to travel to an alternative OCLRE-selected competition site.
  - x. At all levels of competition, OCLRE will attempt to place an even number of teams at each site. If an odd number of teams are present at a site, a team with an adequate number of members will be assigned to “double”.
    1. If a double is required at a competition site, OCLRE will randomly choose a team containing nine or more students. Teams that cannot double can apply for and explain an exemption on the roster form.
  - xi. After each competition, score sheets will be made available to teams, with priority given to teams advancing to the next level (e.g. teams advancing

**Deleted:** All Teams will be matched at random at the **Regional** and **State** Competitions with no exceptions. If paired teams have faced each other in a previous trial, teams will play opposite sides of the case than they played in the previous trial.

from Districts to Regionals). All score sheets will be made available no later than one month after the conclusion of the State Competition. Scoring errors must be brought to OCLRE's attention using the included Scoring Error Notification Form within three business days of the competition, or receipt of the score sheets (whichever is later).

- xii. If there are questions about this Case File or Rules of Competition, only the team advisor and/or legal advisor – not students – may submit questions to the Case and Competition Committees by contacting Danielle Wilmot, Mock Trial Coordinator, at 614-485-3507 or [dwilmot@oclr.org](mailto:dwilmot@oclr.org). The question must include the name and e-mail address of the submitting advisor. The question will be forwarded to the Case or Competition Committee depending on the nature of the question, and if necessary, the answer will be posted on an errata sheet which can be found on the OCLRE website.
- xiii. The errata sheet will be updated every two weeks. To have your question answered in the upcoming errata, your question must be submitted one week prior to the errata release. The first errata will be posted on **Tuesday, October 17, 2023**. To have your question appear on the first errata, your question must be submitted by **Tuesday, October 10, 2023**. The final errata will be posted on **Tuesday, January 16, 2024**. The last day to submit a question is **Tuesday, January 9, 2024**.

b. District Competition

- i. In the District Competition, each team will participate in two trials and will play both Prosecution and Defense.
- ii. District site assignments will be released on **Friday, January 12, 2024** on the OCLRE website. Every effort will be made to place ~~teams~~ in their home county/closest competition site, but teams may be asked to travel up to 60 miles for the District Competition.
  - 1. If a team is unable to travel, the team advisor may apply for a travel restriction on the registration form. Additional documentation may be required for OCLRE to accept the restriction.
  - 2. Schools with more than one team may be split between competition sites.
  - 3. Schools with more than two teams may be required to travel to any competition site in the state.
- iii. Teams that win both trials, and teams that win more than 50 percent of the judges' ballots including at least one ballot in each trial, will advance to the Regional Competition.
  - 1. In the event that no team at a District Competition site advances under this rule, the team winning the most awards (i.e., best attorney and best witness) will advance.
    - a. If, after considering awards won, a tie persists, all tied teams will advance to the Regional Competition.

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c. Regional Competition

- i. In the Regional Competition, each team will participate in two trials and will play both Prosecution and Defense. Regional site assignments will be released on **Friday, February 3, 2023**.

- ii. Teams that advance to the Regional Competition will be placed in a location where there is space available, and OCLRE cannot prioritize keeping any teams in their home county or at their District Competition site.
  - iii. OCLRE will make every effort to assign at least four teams to each Regional Competition site.
  - iv. Teams that win both trials will advance to the State Competition.
    - 1. In the event no team at a Regional Competition site wins both trials, the team with a 1-1 record that won the highest percentage of ballots (i.e. judges scoring that team as the winner) will advance to the State Competition. Ballots won will be calculated only for teams with a 1-1 record.
      - a. If there is a tie in the percentage of ballots won among teams with a 1-1 record, among teams with the same percentage, the team winning the most awards (i.e. best attorney and best witness) will advance to the State Competition.
      - b. If, after considering ballots won and awards won, a tie persists, all tied teams will advance to the State Competition.
- d. State Competition
- i. Day One of the State Competition
    - 1. Teams that advance to the State Competition must travel to Columbus to compete at the Franklin County Courthouses.
    - 2. Teams will advance in a single elimination tournament. Winners will play winners and losing teams will not advance (see exception listed below). Advancing teams will be matched at random, and to the greatest extent possible, each side played in the previous trial switched.
    - 3. OCLRE has the option of providing only one trial after determining how many teams will be present at the State Competition. At the State Competition, teams can be eliminated after they lose one trial, though OCLRE retains the authority to allow each team to compete in two trials depending on the number of teams advancing to the State Competition.
    - 4. Once pairings have been determined for the second trial, they will be announced by OCLRE. After the second trial, OCLRE will announce advancing teams but NOT draw pairings until day two of the competition.
      - a. In the event that the number of teams winning both trials is not exactly equal to eight, additional procedures for advancement will be required. The scenarios in which this occurs are outlined in the table below.
      - b. In the event additional teams are needed, advancing teams will be selected from the teams with a 1-1 record. First, the percentage of ballots won (i.e. judges scoring that team as the winner) at the State Competition will be calculated for all 1-1 teams. The number of teams needed shall be taken from that pool, in order of percentage won, the number of awards won (i.e. best attorney and best witness) at the State

Competition will be used to break the tie. If a tie still persists, the remaining vacancies will be drawn at random from among the tied teams.

Advancing Teams	Result
0	Refer to rule IV.d.4.b above
1	The advancing team will be named the state champion and no further trials will occur.
2	Trial 3 will be held as the State Final trial.
3	1 team will be selected at random from the group of teams with one loss to bring the remaining number of competing teams to 4. Refer to rule IV.d.4.b above
4	Trial 3 will be held as the semi-final round with the remaining 4 teams.
5, 6, or 7	Refer to rule IV.d.4.b above
8	The Quarter-final round will begin on Day 2 with the 8 advancing teams
9-16	Teams participating in the Play-In Round will be drawn at random from the pool of advancing teams. For example, if 11 teams advance from Trial 2, then Trial 3 would have 3 matchups with 6 teams and 5 teams will automatically move on to Trial 4. From the 6 teams that compete in the Play-In Round, the 3 winning teams will join the 5 teams that automatically advanced, for a total of 8 teams in Trial 4. Play-In Round participants will be announced the morning of Day 2 at the State Competition. Teams not competing in the Play-In Round will automatically advance to the next trial. After the Play-In Round, the remaining 8 teams will then proceed with Trial 3 of the State Competition.

ii. Day Two of the State Competition

1. Play-In Round (As Needed)

- a. At the end of the first day of competition, OCLRE will announce the advancing teams. If more than 8 teams qualify for advancement, OCLRE will facilitate a play-in round, which will occur before the Quarterfinal Round on Day Two of the competition.
- b. In a play-in round, OCLRE will draw from the pool of eligible teams to determine which teams will compete. The number of trials will depend on how many teams need to be eliminated to get to eight. The first team drawn for each trial will play Prosecution, the second will play Defense.
- c. After the play-in round, advancing teams will be announced, and OCLRE will prepare to draw new pairings for the quarterfinal rounds.

2. Quarterfinals

- a. In the Quarterfinal rounds, a new drawing will occur in which the first team drawn will play Prosecution, and the second team will play Defense.
  - i. If paired teams faced each other in a previous trial, teams will play opposite sides of the case in the Quarterfinals.
- b. Non-advancing teams will be recognized before the semifinal round.

3. Semifinals

- a. Teams advancing to the semifinal round will be matched at random, and to the greatest extent possible, each side played in the previous trial switched.



- iii. Day Three of the State Competition
  - 1. Championship Round
    - a. The championship round will occur on the third day of competition at the Ohio Statehouse.
    - b. A coin flip to determine sides played will be done in the presence of the teams the morning of the championship round. The team that comes first alphabetically will play heads, the team that comes second will play tails. The team that “wins” the coin toss will play the Prosecution.
- e. National Competition
  - i. The state champion earns the right to represent Ohio at the National High School Mock Trial Competition, if one is held, and will receive a stipend from OCLRE to help defray expenses for national competition.
  - ii. If the state champion team decides to represent Ohio in the National High School Mock Trial Competition, all state championship team members **MUST** be given the option of attending. If a team member is unable to attend for any reason, a written note must be provided to OCLRE by the student and the principal of the participating school before the stipend is sent.
    - 1. OCLRE understands that the winning team may need to add members to complete a roster for the national competition, and team members may be added as needed from the winning school. If team members are added, they must be confirmed by contacting OCLRE before the stipend is sent.
    - 2. The winning team should contact OCLRE following the state competition to receive further information.
  - iii. In the event the state champion is unable to participate in the national competition, OCLRE will extend the invitation to the runner-up to participate in their stead.

## V. Competition Site Logistics

- a. Participants for all OCLRE programs are expected to read the behavior standards at the time the team registers. Team advisors are expected to complete and electronically sign the behavior standards form. All standards must be adhered to at all times by all students, advisors, school staff, parents, and guests of the team.
  - i. Violation of behavior standards could lead to the disqualification of school/group and immediate dismissal from the event.
- b. Team advisors must report to the registration table to register the team and confirm their official roster (submitted through the OCLRE website prior to competition).
- c. Teams will receive score sheets upon check-in at the District, Regional and State Competitions.
  - i. Teams must complete the score sheets prior to the pre-trial conference. This requires the cooperation of teams, team advisors, and legal advisors.
  - ii. Teams must complete the team’s relevant information on **ONE score sheet when playing Prosecution and TWO score sheets when playing Defense.**
  - iii. Upon meeting with the other team, both teams must exchange score sheets and fill in the needed information before the pre-trial conference.

**DO NOT SEPARATE THE SCORE SHEET COPIES.** Score sheets must be completed to identify team members and their roles.

- d. Courtroom assignments will be provided to teams at registration. Pairings will not be released in advance.
- e. The District/Regional Coordinator will not change pairings made by OCLRE under any circumstances. If an issue with pairings is discovered, the Coordinator will notify OCLRE as soon as possible to request new pairings.
- f. Teams may videotape and/or livestream their own trials with permission from the opposing team *and* the presiding judge.
- g. Teams may not use a laptop computer, tablet, phone or other similar device during competition.
- h. The competition will run as scheduled RAIN or SHINE. The only way to guarantee that a team will compete is to arrive at an open competition site. Teams travel to and from the competition at their own risk, and each team's advisor must determine whether it is safe for the team to travel to the competition site.
- i. OCLRE is not responsible for the safety of team members who travel to or from the competition. Teams **MUST** immediately contact the Mock Trial Coordinator **and** the District/Regional Coordinator if weather, illness, or any other reason prevents their participation.
  - i. Team advisors are responsible for knowing and abiding by all school policies, including those related to inclement weather. Teams found to be competing in violation of their school policy (e.g. showing up to competition when all school activities have been cancelled) will be subject to disqualification.
  - ii. In the event that a significant number of teams are not able to compete due to weather at the District or Regional Competitions, OCLRE will make an effort to provide a suitable make-up competition for those teams, but cannot guarantee this will occur. If a make-up competition occurs, it will be scheduled within seven days of the original competition date established by OCLRE and teams may have to travel and compete on a weekend.
- j. On the day of the competition, if a situation develops whereby a team is left without an opponent, teams already competing at that site will be expected to fill in. If a team can "double," it will be assigned to do so.
- k. All students should wear a nametag so the judges can identify them. Witnesses should wear the name of the character they play; all others should wear their own names. It is the responsibility of the team to bring nametags with them. Do not list the school name on the nametag unless advised to do so by the District/Regional Coordinator.
  - i. Students comfortable doing so may indicate their preferred pronouns on their nametags.
    1. Please note, judges may not see everything written on student nametags. Students who would like to be addressed by specific pronouns should also indicate their preference on the score sheet and, if comfortable, share this information during pre-trial.
- l. Team and legal advisors are the **ONLY** individuals from each team who may approach the OCLRE Mock Trial Coordinator or the District/Regional Coordinator with questions or concerns. Students, parents, and guests should not address the Coordinator directly.

- i. Questions or concerns about a trial (procedures, judges, etc.) must be directed through the competition site coordinator or the OCLRE Mock Trial Coordinator.
- m. All teams must be accompanied at the District, Regional and State Competitions by a team advisor, teacher or school official, legal advisor, or other designated adult. If a school has more than one team, each team must be subject to the supervision of a designated adult who can adequately supervise the team's behavior. While the supervisor does not need to be in the room at all times, they must be available to respond promptly if there is a need. The adult shall be listed on the team roster as the "designated adult supervisor." Failure to comply with this rule may, at the discretion of the Mock Trial Coordinator or the District/Regional Coordinator, be grounds for disqualification.
- n. All team members and any props or uniforms must pass through local courtroom security. As a general rule, courtroom security will not allow any weapon or object that looks like a weapon into the courthouse. Be sure to leave adequate time and be prepared to comply with courthouse security.

## VI. Judging **Qualifications** and Scoring Guidelines

- a. Any high school graduate with significant Mock Trial experience, paralegal, or current law student is eligible to serve as a scoring judge for the Ohio Mock Trial Competition.
- b. Any individual with a Juris Doctor is eligible to serve as a presiding judge or scoring judge for the Ohio Mock Trial Competition. Preference for presiding judge will be given to those with Mock Trial experience.
- c. Every effort will be made to provide each trial with a three-judge panel, all of whom will complete score sheets. In some instances, a trial may have to move forward with only two judges.
  - i. On a three-judge panel, the team that wins two out of the three judges' ballots wins the trial.
  - ii. On a two-judge panel, the team that wins both judges' ballots wins the trial.
  - iii. If neither team wins both ballots on a two-judge panel, the judges will add each team's total points. The team with the highest total points wins the trial.
    - 1. If the team's total points are tied, the team that won the presiding judge's ballot will win the trial.
- d. Attorney and witness awards will be determined in the following way:
  - i. The Outstanding Attorney Award will be determined based on the total points awarded to each attorney on the presiding judge's score sheet, with the attorney receiving the most points receiving the award. If two or more attorneys are tied for the most points on the presiding judge's score sheet, the presiding judge will select one of those attorneys to receive the award.
  - ii. The Outstanding Witness Award will be determined based on the total combined points awarded to each witness by the scoring judges. The witness earning the most points will receive the award. If two or more witnesses are tied for the most total points, the presiding judge will select one of those witnesses to receive the award.
  - iii. **Awards are not to be considered as "consolation" prizes.**
- e. Judges will evaluate each trial element on a scale of 1-10. The team will also be scored on a 1-10 point scale for its overall performance.

- f. Judges will score individual and team performances using *whole numbers only*. The team that earns the most points on an individual judge's score sheet is the winner of that ballot.
- g. A judge CANNOT have a tie between the two teams.
- h. Teams will advance from Districts to Regionals as set forth in Competition Rule IV.b.iii. on page X of this Case File.
- i. Teams that win both trials will advance from Regionals to States.
- j. Judges will hear the trial as a "bench trial." This is not a jury trial, and students should address the court. One judge will serve as the presiding judge and will control the courtroom and rule on motions and objections. The other judge(s) will serve as scoring judges and evaluate the individual and team performances.
- k. All attempts will be made not to have the same judge assigned to judge a team more than once at the same level of competition.
- l. All judges will receive a case summary, competition rules and scoring procedures.
- m. If robes are available, judges may be asked to wear them for competition.
- n. Only the presiding judge is to speak during a trial. The presiding judge's comments are limited to ruling on objections and do not include questioning witnesses or counsel.
- o. The trial will be judged based on individual and team performance, not the merits of the case.

**Deleted:** As stated in Competition Rule IV.b.iii, teams that win the majority of judges' ballots OR win both trials will advance in competition from districts to regionals.

# Who Wins the Trial?



How Many Judges are on the Panel?

**THREE (3)**

1 Presiding, 2 Scoring

The team that wins 2 out of 3 judges' ballots wins the trial.

**TWO (2)**

1 Presiding, 1 Scoring

**YES**

The team that wins both judges' ballots wins the trial.

←... Did one team win both judges' ballots?

**NO**

Judges will add together each team's total points from both ballots.

The team with the most points wins the trial.

**YES**

The team that wins the presiding judge's ballot wins the trial.

←... Did one team earn more points?

**NO**

# How to Advance to Regionals



Did your team win both trials?

**YES**

**NO**

Your team advances to Regionals!

Did your team win the majority of the judges' ballots and at least one ballot in each trial?\*

**YES**

**\*Majority means:**

3 out of 4

3 out of 5

4 out of 6

## SCORING JUDGE RUBRIC

### VII. Scoring Benchmarks

#### A. Scoring Judge Rubric

1. Attorney Performance Indicators:
  - ✓ *Advocacy skills:* creative, organized and convincing presentation
  - ✓ *Understanding of legal issues:* ability to apply law and facts to case
  - ✓ *Oratorical skills:* poised, able to think on feet, extemporaneous delivery
  - ✓ *Civility/Demeanor/Professionalism:* modeled respectful and professional behavior at all times towards the court, fellow team members, advisors, and opposing teams.
  - ✓ *Mastery of trial technique:* effective use of objections, appropriate form of questioning, ability to recognize and rehabilitate own witness's weaknesses, mitigate opponent's good points
  - ✓ Did not ask questions that called for an unfair extrapolation
  - ✓ Did not make excessive, unnecessary objections
  - ✓ *Opening statement:* provided case overview, identified theory of the case, discussed the burden of proof, stated the relief requested and was non-argumentative
  - ✓ *Closing argument:* continued theory of the case introduced in opening statement, summarized the evidence, applied the applicable law, discussed the burden of proof, concentrated on the important - not the trivial - and overall was persuasive
  - ✓ Complied with Competition Rules and Civility Statement
2. Witness Performance Indicators:
  - ✓ Knowledge of case facts and theory of team's case
  - ✓ Observant of courtroom decorum
  - ✓ Believability of characterization and convincing in testimony
  - ✓ Avoided unnecessarily long and/or non-responsive answers on cross-examination
  - ✓ Articulate and responsive
  - ✓ Did not make unfair extrapolations
  - ✓ Complied with Competition Rules and Civility Statement
3. Team Effort Indicators:
  - ✓ Established a credible theme for its argument
  - ✓ Selected appropriate witnesses to prove the argument
  - ✓ Organized witness examinations that developed its argument
  - ✓ Case was carefully crafted and skillfully delivered
  - ✓ Complied with Competition Rules and Civility Statement

## Points, Performance and Evaluation Criteria

- 9-10 Excellent:** Exhibits mastery of all procedural and substantive trial elements. Significantly advances team effort.
- 7-8 Good:** Proficient in most procedural and substantive trial elements. Helps team on the whole.
- 5-6 Average:** Moderately comfortable with procedural and substantive trial elements but contains some imprecise use of trial elements or lacks polish.
- 3-4 Minimal:** Does not advance team effort. Minimal comprehension of procedural and substantive trial elements.
- 1-2 Limited:** No evidence of procedural and substantive trial elements.

## B. Penalties

### 1. Material Rule Violation

A Material Rule Violation is a violation of a competition rule that affects the fairness of the trial. If at least two judges on the panel agree that a Material Rule Violation has occurred, a 5-point penalty shall be deducted from the offending team's score on each judge's score-sheet.

- a. One example of a Material Rule Violation affecting the fairness of a trial which **may** warrant a 5-point deduction would be a team going over their time-limit for closing arguments by more than 15 seconds without prior permission of the presiding judge to do so.

### 2. Gross Rule Violation

If at least two judges on the panel agree that a Material Rule Violation has occurred, and agree that the 5-point penalty is insufficient given the seriousness of the violation, the panel and the Coordinator shall consult with the Competition Committee. The Committee may impose additional sanctions including, but not limited to, disqualification.

- a. One example of a Gross Rule Violation warranting a serious penalty **may** be communication, intended to impact the students' performance, between team members and their team or legal advisor, whether through signals, notes, or electronically.
3. All objections/alleged violations raised by a team must be made before the presiding judge retires for scoring (during the post-trial objections period).
  4. Complaints not raised prior to the presiding judge retiring for scoring may be made only by the **team advisor** after the competition in writing using the complaint form in this Case File.
    - a. There is a strong presumption that complaints will **not** alter the decisions of the judicial panel and **are used only for potential rule changes or procedure variations in future years**. In exceptional circumstances, the Competition Committee may find that the seriousness of a complaint warrants additional action.



## PROCEDURAL RULES

### I. Trial Rules and Procedures

#### A. Preparation

1. ~~This Case File and Rules of Competition contain all materials necessary to participate. Students playing the roles of attorneys may make appropriate use of the case materials, including case stipulations, summaries of the legal arguments, the Judge's Order, all witness statements, and any errata updates. However, this does not include the case introduction, which is not considered a formal part of the case materials.~~
2. Supplemental materials are also provided to help team advisors teach the case and explain the legal issues and procedures involved. These materials may not be introduced into the trial; they are for educational purposes only.
3. If a legal citation is referred to in the case, it may be utilized in development of the legal theory and cited. However, only facts and information given about that citation in the case materials may be communicated to the court.
4. It is the responsibility of the team to present and advocate the law and facts of the case to the judges. As in real life, the team should not assume judges know the facts of the case.

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#### B. Time Limits

1. A trial is scheduled for two hours including all activities beginning with the pre-trial conference and ending with the closing of court. The presiding judge will enforce the time limit and may, at their discretion, grant a time extension in the interest of fairness.
2. **Timing for the Opening Statements will begin after the introductions of performing team members are made.**
3. If a time-keeping discrepancy of **more than 15 seconds** is discovered between the Prosecution and Defense teams' timekeepers, the timekeepers should notify the presiding judge as soon as the discrepancy is discovered. In this event, one of the timekeepers should stand, wait to be recognized, and say "Your Honor, we have a time discrepancy of more than 15 seconds." The presiding judge will ask the nature of the discrepancy and then rule on the discrepancy before the trial continues. Once the presiding judge rules, the timekeepers shall synchronize their stop watches to match the ruling. The decisions of the presiding judge regarding timing disputes are final, and no timekeeping disputes will be entertained after the trial has concluded.
4. The time clock will stop for objections and responses.
5. The timekeepers will guide the judges' comments by showing a 1:00 minute card and a stop card 11 minutes and 12 minutes into the judge's comments.

#### C. Courtroom Setting

1. Prosecution counsel on the right (facing bench).
2. Defendant's counsel on the left (facing bench).
3. Witnesses behind counsel tables.
4. Judges on the bench (if possible).

5. Bailiff in front of or next to the bench.
6. The timekeepers (unless also acting as bailiff) and video camera person in the jury box (if possible and if video is permitted by the opposing team and presiding judge, see rule D.1).
7. Team advisors and legal advisors behind the teams, in the gallery.

**D. Conduct During Trial and Trial Sequence**

1. The presiding judge controls the courtroom. They may ask anyone to leave, if necessary. Teams may videotape their own trials with permission from the opposing team and at the presiding judge's discretion. Videos may be shared only with the teams featured in the specific videos.
2. Until closing arguments have concluded, team attorneys may communicate only with each other. During the post-trial objection phase of the trial, attorneys may communicate with the witnesses, bailiff and timekeeper performing in the actual round. However, none of the performing team members may communicate in any way with team advisors, legal advisors, team members not performing in that round or any other observers once the judges enter the courtroom and the bailiff opens the court. This restriction includes breaks during the trial.
3. If a team prepares a third witness for trial who they do not call, that third witness may not participate in the trial in any way including, but not limited to, sitting with the other witnesses and conferring during the trial.
4. Attorneys may speak from a lectern in the center of the courtroom, if one is available. **Lecterns or other furnishings may not be moved into or out of any courtroom at any time.** The Prosecution side is responsible for returning the lectern and chairs to original position inside the courtroom following the trial. At the discretion of the presiding judge, attorneys may walk about the courtroom. The preference of the presiding judge should be raised and determined at the pre-trial conference.
5. No furnishing/equipment may be moved into or out of the courtroom. Not all courtrooms are equipped with the same furnishings; therefore, blackboards and other visual aids may not be used. The rule on exhibits prevails.
6. The trial, including judges' comments, should last no longer than two hours.
7. Preparing Ballots for the Pre-Trial Conference  
Prior to the pre-trial conference, both teams must roster the score sheets for the round. This requires the teams to disclose which witnesses they will be calling. Teams must also disclose which segment of the trial each attorney will perform. All information will be recorded in the (3) three ballots provided: (2) two for the scoring judges and (1) one for the presiding judge. These completed ballots will be given to the judges at the pre-trial conference.
8. Pre-trial Conference (10 minutes)  
Student attorneys will lead a pre-trial conference with the judicial panel. Team advisors, legal advisors and/or designated adult supervisors are encouraged to attend.  
**Required During Pre-Trial:**
  - a. Providing completed score sheets to the judges.

- b. Discussing whether teams have permission to film.
  - i. Both teams **and** the presiding judge must agree.

**Permitted During Pre-Trial:**

- a. Questions related to judicial preferences (e.g. should attorneys stand when making objections and when waiting to respond after objections?)2.
- b. Questions related to mobility (e.g. may attorneys move about the well of the courtroom?)2.
- c. Stating preferred pronouns for students who wish to share this information.
  - i. This is **not** required. Students may include this information on the score sheet if they are not comfortable addressing it during pre-trial.
- d. Discussing accommodations or modifications approved by OCLRE (e.g., a witness requires braille text, which has been provided for use).

**Prohibited During Pre-Trial:**

- a. Giving judges copies of any trial material (including but not limited to trial binders, laminated exhibits, copies of witness statements, etc.).
  - i. Judges receive materials from OCLRE. Additional items to be considered should be shown to the bench at the time they are raised during trial (e.g. when used to impeach a witness), in the same format indicated in the rules (e.g. clean, unmarked, unaltered copies).
- b. Oral case summaries by either team.
  - i. Judges receive a case summary and errata summary from OCLRE. Any presentation of evidence or legal arguments should occur during the trial itself.
- c. Making of motions or seeking judicial notice of any item (including but not limited to declarations of expert witnesses, voir dire of witnesses, motions to separate witnesses, etc.)

9. Opening the Court

When the judges enter the courtroom, the bailiff opens the court by saying:

“All rise. Hear ye, hear ye, the U.S. District Court for the Middle District of Ohio [or whatever the name of the court may be], Mock City, Ohio [or whatever town in which the court is located] is open pursuant to adjournment. All having business before this honorable court draw near, give attention, and you shall be heard. You may be seated.”

10. Opening Statements (4 minutes each team)

- a) The presiding judge should ask counsel for Prosecution to make an opening statement. Prosecution counsel should introduce themselves and their team members and the roles they are playing and then present the opening statement. The same procedure is used with Defense counsel.

- b) An opening statement has been defined as “a concise statement of [the party’s] claim [or defense] and a brief statement of [the party’s] evidence to support it.” Judge Richard M. Markus, *Trial Handbook for Ohio Lawyers* (Thomson-West, 2006 Edition), §7:1, p. 305. A party seeking relief should indicate the nature of the relief sought. It may be useful to acknowledge the applicable burden, or burdens, of proof. An opening statement should not be argumentative and should be used by attorneys to present their theories of the case. Legal authorities can be cited to show what issue or issues are before the court for decision. It is appropriate to lay out what the attorney expects the evidence will show, but the wise attorney will be conservative in this regard.
- c) The most important aspect of the opening statement is to frame the issues. The attorney wants to frame the issues so that there is a compelling narrative (the theory of the case) in their client’s favor into which all the favorable facts and all favorable legal authority neatly fit. A well-crafted opening statement tells a story that will dominate the trial that follows.

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11. Swearing in the Witnesses

- a) The bailiff swears in with:  
 “Will all witnesses and parties who are to give testimony in these proceedings please step to the front?”
- b) Then the bailiff holds up their right hand and says:  
 “Please raise your right hand. Do you affirm that the testimony you are about to give will comply with the facts and rules of the Ohio Mock Trial Competition?”
- c) All witnesses will remain in the courtroom but are deemed to be constructively separated. Therefore, it should be assumed that witnesses are unaware of prior trial testimony and no motion for separation of witnesses shall be necessary.
- i. In a criminal case in which the defendant is a witness, the defendant has the right to be present for the entirety of the trial and is not subject to witness separation.

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12. Testimony of Witnesses (Direct/Re-direct 20 minutes each team; Cross/Re-Cross 18 minutes each team)

- a) Counsel for the Prosecution and Defense will each call two witnesses. Prosecution attorneys must call Prosecution witnesses and Defense attorneys must call Defense witnesses.
- b) Counsel for Prosecution will present their case first. The presiding judge will ask counsel for Prosecution to call the first witness. The witness will then testify in the following examination sequence:
- i. Direct
  - ii. Cross
  - iii. Re-Direct
  - iv. Re-Cross
- c) When Prosecution counsel calls the second witness, the witness will be called to the stand and the procedure repeated.

- d) The presiding judge will then ask counsel for the Defense to call their first witness. The Defense follows the same procedure as the Prosecution.
- e) Witnesses are bound by their written statements, case stipulations, errata updates issued by OCLRE, and all rules of the Ohio Mock Trial program.
- f) Witness statements may be used by counsel to impeach a witness or refresh a witness's memory in accordance with the Simplified Rules of Evidence. Witnesses may not, however, bring witness statements or notes to use as a trial aid during testimony.
- g) Fair extrapolations are permitted only during cross-examination if they are (i) consistent with the facts contained in the case materials and (ii) do not materially affect the witness's testimony. If a witness invents an answer that is likely to affect the outcome of the trial, the opposition may object. **Teams that intentionally and frequently stray outside the case materials will be penalized.**
- h) If an attorney who is cross-examining a witness asks a question, the answer to which is not included in the witness's written statement or deposition, the witness is free to "create" an answer provided it is responsive to the question, does not contain unnecessary elaboration beyond the scope of the witness statement, and does not contradict the witness statement.

13. Exhibits

- a) All exhibits contained in this Case File are stipulated as admitted. Only exhibits that are part of the case materials may be used. Teams may not use additional visual aids.
- b) If used, the exact page from this Case File may be reproduced on 8½ x 11 paper, but not bound in plastic or modified in any way. The trial proceedings are governed by the Simplified Rules of Evidence found in this Case File.

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14. Closing Arguments (5 minutes each team, with additional 2 minutes for Prosecution rebuttal)

- a) The presiding judge will allow attorneys two minutes (no longer) before closing arguments to incorporate results from cross or to collect their thoughts. No one shall leave the courtroom and all rules on communication during the trial prevail. The presiding judge will ask Prosecution and Defense counsel if they are ready to present closing arguments. Counsel for Prosecution will present their closing argument first, followed by the Defense's closing argument. Counsel for Prosecution has the option for a two-minute rebuttal after the Defense's closing argument. These two minutes do not have to be requested in advance. The optional rebuttal is limited to the scope of the Defense's closing argument.
- b) Closing arguments, "are permitted for the purpose of aiding the [finder of fact] in analyzing all the evidence and assisting it in determining the facts of the case." Markus, op. cit., §35:1, at p. 1013. In a bench trial (to a judge, rather than to a jury), the closing argument is also the time to argue the law to the judge.

- c) The attorney should point out to the court that their side has proven everything that it promised to prove, while pointing out that the other side failed to prove what it promised it would. It can now be shown how the evidence that was presented fits into the narrative (the theory of the case) that was introduced in opening statement, which, in turn, applying the law, compels a result in that side's favor. Remind the court what that favorable result is (i.e., the particular relief your side is seeking from the court).
- d) On occasion, evidence presented won't survive an objection, or the attorney's best witness will be forced to equivocate on an important point on cross-examination. When this occurs, adjustments have to be made to the closing argument to fit the evidence actually presented in the trial.
- e) Exhibits may be used during closing arguments *only* if witness testimony regarding the exhibit was introduced during the trial.
- f) The closing arguments are the final opportunities to persuade the judge. In oral presentation, the arguments having the most impact are the first arguments and the final arguments. The attorney should try to make the first and last things said in closing argument the most vivid and persuasive, while reserving those points that have less emotional impact, but need to be said, for the middle of the argument.

15. Objections During the Trial

- a) In addition to evidentiary objections, objections may be made during the trial by an attorney who believes that any rule set forth in this Case File has been violated. For example, if an exhibit is mounted or modified, the other team's attorney may state an objection. Similarly, if an attorney observes what appears to be communication between a team and their team advisor during trial, the attorney may state an objection.
- b) In making these objections, the procedure set forth for stating evidentiary objections (Simplified Rules of Evidence and Common Objections) should be followed. As with evidentiary objections, the objection must be made at the time of the claimed violation, and the attorneys knew or should have known of the violation. No objections may be raised during opening statements or closing arguments.
- c) The presiding judge may make rulings as appear appropriate, including prohibiting use of an exhibit that has been modified, requiring compliance with the rule, admonishing individuals or teams, deducting penalty points from the team's score (such deductions to be done only by the entire panel during post-trial scoring), etc. All judges will not interpret the rules and guidelines the same way. The judge's decision, however, is final, and no appeals procedure is available. The clock stops for objections and judge's ruling.

16. Post-Trial Objections

After closing arguments are completed, and after the scoring judges have been excused to begin scoring in chambers, 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 remain on the bench for two minutes, during which time any objection may be brought to my

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attention by a team attorney. The team attorneys may communicate with all performing team members (witnesses, bailiff and timekeeper) involved in this actual round but may not communicate in any way with team advisors, legal advisors, or anyone outside their performing team members. If no team has any post-trial objections, I will retire for scoring.”

- a. Motions for directed verdict or dismissal of the case are not permitted.
- b. **Objections that were or could have been raised during the trial, including evidentiary objections and timing discrepancies, may NOT be raised at this time.**

If no objection is made within two minutes, the presiding judge will retire for scoring. If there is an objection, one of the attorneys for the team will stand and state the objection and the ground for objection. The judge may conduct an inquiry in the manner they deem appropriate; the judge in their discretion may solicit a response and/or inquire further into the facts. The presiding judge does not announce a finding but retires for scoring. The presiding judge then consults with the scoring judges and may consult with the competition site coordinator or the Mock Trial Coordinator.

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17. Rule Violations and Penalties

For information regarding rule violations and penalties, please see Competition Rule VII.B.1-2.

18. Scoring

After the trial, the judicial panel will retire to chambers to tally their scores. Score sheets should be completed immediately after the trial, and judges may not keep score sheets between trials.

- a. Judges may confer with one another for clarification, but ultimately each judge will make their own determination as to final scores.
- b. Using the Presiding Judge Tally Sheet, determine the winners of the individual awards (i.e. best attorney and best witness).
  - i. Individual awards are to be determined using the scores assigned. They should *not* be treated as consolation prizes.

19. Conclusion of Trial

The bailiff calls court back in session with:

“All rise. Court is now back in session.”

After the judges are seated, the bailiff says:

“You may be seated.”

20. Debriefing and Announcement of Witness and Attorney Awards

The presiding judge will provide comments on the strengths and weaknesses of each team’s performance. Debriefing should be precise, and last no more than 12 minutes. The timekeepers will give the judge a one-minute warning and then a “stop.”

- a. Any penalties assessed on a team will be announced.

- b. The scoring judges will announce the outstanding witness and attorney awards, discuss the highlights of their performances, and present their certificates.
  - c. **The winning team and scoring information will not be announced.** Results will be announced and/or posted by the coordinator at the end of the District and Regional Competitions and at the conclusion of appropriate rounds of the State Competition. The official competition score sheet may be posted by the Coordinator at the end of the District/Regional Competitions. After the District Competition, score sheets from the District Competition will be sent to the teams advancing to the Regional Competition. Individual team score sheets for all teams from all levels of competition will be provided no later than **Monday, April 11, 2022**, one month following the State Competition.
  - d. Decisions of the judicial panel are final. If an advisor has a complaint, they must complete an official complaint form, which will be reviewed by the Competition Committee. Follow-up on the status of the complaint will be communicated to team advisors as-needed.
21. Closing of Court
- a. The presiding judge will recognize and thank the team advisors, legal advisors, students, and families for their support and will turn the court back to the bailiff.
  - b. The bailiff closes the official proceeding with:  
“All rise. This honorable court is hereby adjourned.”
  - c. Both teams are responsible for leaving the courtroom in the same condition as it was found. Both teams are responsible for taking their own papers and notebooks and disposing of them properly.



**II. Condensed Trial Sequence and Time Guidelines (Running Clock):**

<u>Part of Trial</u>	<u>Minutes</u>
Pre-trial conference	10
Opening Statement - Prosecution	4
Opening Statement - Defense	4
Direct and Re-Direct (2 witnesses)	20
Cross and Re-Cross (2 witnesses)	18
Direct and Re-Direct (2 witnesses)	20
Cross and Re-Cross (2 witnesses)	18
Intermission to gather thoughts	2
Closing Argument - Prosecution	5
Closing Argument - Defense	5
Rebuttal - Prosecution (optional)	2
Subtotal	<u>108</u>
Judges' Comments	12 (timed)
TOTAL	120 = 2 HOURS

## **SIMPLIFIED RULES OF EVIDENCE**

The rules contained in this section represent the entirety of the applicable evidentiary rules. In some instances, the simplified rules may differ in form and content from either the Federal Rules of Evidence and/or the Ohio Rules of Evidence (e.g., Mock Trial Rule 803 contains only *six* exceptions to hearsay, rather than the *twenty-three* listed in the Ohio Rules). In some instances, rule sections have been added to existing rules to cover situations unique to mock trial (e.g. clarifications have been added to Rule 602 governing the invention of fact).

### **Article I. GENERAL PROVISIONS**

#### **RULE 101. Scope of Rules: Applicability; Privileges; Exceptions**

These rules govern proceedings in the Ohio Mock Trial Program and are the only basis for evidentiary objections in the Ohio Mock Trial Program.

#### **RULE 103. Offer of Proof**

Offers of proof are not permitted.

#### **RULE 104. Voir Dire**

Voir Dire examination of a witness is not permitted.

#### **RULE 105. Directed Verdicts**

No directed verdict or dismissal motion may be entertained.

### **Article IV. RELEVANCY AND ITS LIMITS**

#### **RULE 401. Definition of Relevant Evidence**

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

#### **RULE 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible**

Evidence which is not relevant is not admissible.

#### **RULE 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay**

**(A) Exclusion mandatory.** Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.

**(B) Exclusion discretionary.** Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence.

#### **RULE 404. Character**

**Character evidence.** Evidence of a person's character, other than their character for truthfulness, may not be introduced. Evidence about the character of a party for truthfulness or untruthfulness is only admissible if the party testifies.

## Article VI. WITNESSES

### RULE 601. General Rule of Competency

Every person is competent to be a witness.

### RULE 602. Lack of Personal Knowledge

**(A)** A witness may not testify to a matter or exhibit unless evidence is introduced sufficient to support a finding that they have personal knowledge of the matter. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

**(B) Invention of Facts and Extrapolation** The object of these rules is to prevent a team from "creating" facts not in the material to gain an unfair advantage over the opposing team.

**(1) Invention of Facts - Direct Examination. On direct examination the witness is limited to the facts given in their own written statement.** If the witness goes beyond the facts given (adds new facts or speculates about facts), the testimony may be objected to by the opposing counsel as speculation or as invention of facts outside the case materials. If a witness testifies *in contradiction* of a fact given in the witness statement, opposing counsel should impeach the witness's testimony during cross-examination. [See also Procedural Rules, D.12 regarding Witness Testimony]

**(2) Invention of Facts - Cross-Examination.** If on cross-examination a witness is asked a question, the answer to which is not contained in the facts given in the witness statement, the witness may respond with any answer, so long as it is responsive to the question, does not contain unnecessary elaboration beyond the scope of the witness statement, and does not contradict the witness statement. An answer which is unresponsive or unnecessarily elaborate may be objected to by the cross-examining attorney. An answer which is contrary to the witness statement may be impeached by the cross-examining attorney. [See also Procedural Rules, D.12 regarding Witness Testimony].

**(C)** When an **Invention of Fact** objection is made, the burden is on the team presenting testimony to show where in the materials the information is sourced.

### RULE 603. Use of Outside Research

Teams may not make reference during trial to any material not included in this Case File. When an outside research objection is made, the burden is on the team presenting testimony to show where in the materials the information is sourced.

### RULE 608. Evidence of Character and Conduct of Witness

The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

**RULE 611. Mode and Order of Interrogation and Presentation**

**(A) Control by court.** The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence.

**(B) Scope of cross-examination.** The scope of 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's statement, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.

**(C) Leading questions.** A leading question is one that suggests a certain answer to the witness; it "leads" the witness to that answer. Leading questions should not be used on the direct examination of a witness. Leading questions are permitted on cross-examination. When a party calls a hostile witness, direct examination of a hostile witness may be by leading questions.

**(D) Scope of Re-Direct Examination** After cross-examination, additional questions may be asked by the direct examining attorney limited to the matters raised opposing counsel on cross-examination, or for the purposes of rehabilitating a witness's character or credibility. Leading questions are not permitted on re-direct examination.

**(E) Scope of Re-Cross-Examination** After re-direct, additional questions may be asked by the cross-examining attorney, limited to the scope of issues raised by opposing counsel on re-direct.

**(D) Hostile Witness Rule** Where a witness is an unwilling one, hostile to the party calling them, or stands in such a situation as to make them necessarily adverse to such party, their examination in chief may be allowed to assume something of the form of cross-examination, at least to the extent of allowing leading questions to be put to them.

**(1)** The issue is whether the witness's hostile attitude toward the party calling them is likely to make the witness reluctant to volunteer facts helpful to that party.

Hostility may be demonstrated by the witness's demeanor in the courtroom, by other facts and circumstances, or by a combination thereof.

**(2)** Whether a witness is hostile is confided to the sound discretion of the presiding judge.

**RULE 612. Writing Used to Refresh Memory**

If a witness uses a writing to refresh their memory while testifying, a clean and unmarked copy of the writing must be shown to opposing counsel.

**RULE 616. Bias of Witness**

In addition to other methods, a witness may be impeached by any of the following methods:

**(A) Bias.** Bias, prejudice, interest, or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by extrinsic evidence.

**(B) Sensory or mental defect.** A defect of capacity, ability, or opportunity to observe, remember, or relate may be shown to impeach the witness either by examination of the witness or by extrinsic evidence.

**(C) Specific contradiction.** Facts contradicting a witness's testimony may be shown for the purpose of impeaching the witness's testimony.

(1) Errata updates related to a witness's testimony may be shown for the purpose of impeaching that witness's testimony.

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## Article VII. OPINIONS AND EXPERT TESTIMONY

### RULE 701. Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, their testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of their testimony or the determination of a fact in issue.

### RULE 702. Testimony by Experts

A witness may testify as an expert if: (1) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony; and (2) The witness's testimony is based on reliable scientific, technical, or other specialized information.

### RULE 703. Bases of Opinion Testimony by Experts

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

### RULE 704. Opinion on Ultimate Issue

Testimony in the form of an opinion or inference otherwise admissible is not objectionable solely because it embraces an ultimate issue to be decided by the trier of fact.

### RULE 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give their reasons therefore after disclosure of the underlying facts or data. The disclosure may be in response to a hypothetical question or otherwise.

## Article VIII. HEARSAY

### RULE 801. Definitions

The following definitions apply under this article:

- (A) **Statement.** A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by them as an assertion.
- (B) **Declarant.** A "declarant" is a person who makes a statement.
- (C) **Hearsay.** "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
- (D) **Statements that are not hearsay.** A statement is not hearsay if:
  - (1) **Prior statement by witness.** The declarant testifies at trial or hearing and is subject to cross-examination concerning the statement, and the statement is (a) inconsistent with their testimony, and was given under oath subject to cross-examination by the party against whom the statement is offered and subject to the penalty of perjury at a trial, hearing, or other

proceeding, or in a deposition, or (b) consistent with their testimony and is offered to rebut an express or implied charge against them of recent fabrication or improper influence or motive, or (c) one of identification of a person soon after perceiving them, if the circumstances demonstrate the reliability of the prior identification.

**(2) Admission by party-opponent.** The statement is offered against a party and is (a) their own statement, in either their individual or a representative capacity, or (b) a statement of which they have manifested their adoption or belief in its truth, or (c) a statement by a person authorized by them to make a statement concerning the subject, or (d) a statement by their agent or servant concerning a matter within the scope of their agency or employment, made during the existence of the relationship, or (e) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy upon independent proof of the conspiracy.

**RULE 802. Hearsay Rule**

Testimony which is hearsay is inadmissible.

**RULE 803. Hearsay Exceptions; Availability of Declarant Immaterial**

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

**(A) Present sense impression.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter unless circumstances indicate lack of trustworthiness.

**(B) Excited utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

**(C) Then existing, mental, emotional, or physical condition.** A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

**(D) Statements for purposes of medical diagnosis or treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

**(E) Records of regularly conducted activity.** A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by testimony.

**RULE 804. Hearsay Exceptions; Declarant Unavailable**

**(A) Definition of unavailability.** “Unavailability as a witness” includes any of the following situations in which the declarant:

(1) is unable to be present or to testify at the hearing because of death or then-existing physical or mental illness or infirmity;

**(B) Hearsay exceptions.** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) **Statement under belief of impending death.** In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant, while believing that their death was imminent, concerning the cause or circumstances of what the declarant believed to be their impending death.

(2) **Statement against interest.** A statement that was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant’s position would not have made the statement unless the declarant believed it to be true. A statement tending to expose the declarant to criminal liability, whether offered to exculpate or inculpate the accused, is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

#### **RULE 805. Hearsay Within Hearsay**

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

### **Article IX. AUTHENTICATION AND IDENTIFICATION**

#### **RULE 901. Exhibits**

Exhibits contained in [this Case File](#) are stipulated as admitted. Therefore, it is not necessary to demonstrate that an exhibit is authentic or an accurate representation, nor is it necessary to move the court for the admission of an exhibit. Exhibits may not be altered to give either side an unfair advantage. As an exhibit is presented through the testimony of a witness with knowledge of the exhibit, such testimony must abide by all other Simplified Rules of Evidence.

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## EXAMPLES: COMMON OBJECTIONS AND TRIAL PROCEDURE

### I. Procedure for Objections

An attorney may object if they believe that the opposing attorney is attempting to introduce improper evidence or is violating the Simplified Rules of Evidence or the Mock Trial Rules of Competition. The attorney wishing to object should stand and object at the time of the claimed violation. (Note: Only the attorney who conducts the examination of a witness may raise and respond to objections during the opposing counsel's examination of that witness.) The attorney should state the reason for the objection and **may** cite by rule number the specific rule of evidence that has been violated. The attorney who asked the question may then make a statement about why the question is proper. The judge will then decide whether a question or answer must be discarded because it has violated the Simplified Rules of Evidence (sustained), or whether to allow the question or answer to remain in the trial record (overruled). Objections should be made as soon as possible; however, an attorney is allowed to finish their question before an objection is made. Any objection that is not made at the time of the claimed violation is waived. When an objection has been sustained, the attorney who asked the question may attempt to rephrase that question. Judges may make rulings that seem wrong to you. Also, different judges may rule differently on the same objection. Always accept the judge's ruling graciously and courteously. Do not argue the point further after a ruling has been made.

Deleted: , if possible,

### II. Common Objections

The following are examples of common objections. This is not a complete list. Any objection properly based on the Simplified Rules of Evidence is permitted:

- A. Irrelevant evidence:** "Objection. This testimony is irrelevant."
- B. Irrelevant evidence that should be excluded:** "Objection. This is unfairly prejudicial (or a waste of time) and should be excluded because..."
- C. Leading question:** "Objection. Counsel is leading the witness." (Remember, leading is only objectionable if done on direct or re-direct examination.)
- D. Narrative answer:** "Objection, this witness's answer is narrative." Commonly used during direct examination when a witness's answer has gone beyond the scope of the initial question.
- E. Non-responsive answer:** "The witness is nonresponsive, Your Honor. I ask that this answer be stricken from the record." The witness's answer does not answer the question being asked. Commonly used by the cross-examining attorney during cross-examination.

*Example:*

Attorney: Isn't it true that you hit student B?  
Witness: Student B hit me first. They were asking for it, acting like a jerk and humiliating me in front of all my friends.  
Attorney: Your Honor, I move to strike the witness's answer as non-responsive and ask that they be instructed to answer the question asked.



(Another option is to impeach the witness with prior testimony if they testified in their deposition that they hit student B.)

- F. Beyond the scope of cross or re-direct:** “Objection. Counsel is asking the witness about matters that were not raised during the cross- or re-direct examination.”
- G. Improper character testimony:** “Objection. This is testimony about character that does not relate to truthfulness or untruthfulness.”
- H. Improper opinion:** “Objection. Counsel is asking the witness to give an expert opinion, and this witness has not been qualified as an expert.” *OR* “Objection. Counsel’s question calls for an opinion which would not be helpful to understanding the witness’s testimony (or which is not rationally based upon what the witness perceived.)”
- I. Lack of personal knowledge:** “Objection. The witness has no personal knowledge that would allow them to answer this question/testify as to this exhibit.”
- J. Speculation:** “Objection. The witness is speculating/this question calls for speculation.” A hybrid between lack of personal knowledge and improper opinion.
- K. Hearsay:** “Objection. Counsel’s question calls for hearsay.”
  - a. If hearsay in a response could not be anticipated from the question, or if a hearsay response is given before the attorney has a chance to object, the attorney should say, “I ask that the witness’s answer be stricken from the record on the basis of hearsay.”
    - i. *Example:*
      - 1. Witness X testifies that “Mrs. Smith said that the decedent’s wife had a bottle of arsenic in her medicine cabinet.” This testimony is inadmissible if offered to prove that the decedent’s wife had a bottle of arsenic in her medicine cabinet, since it is being offered to prove the truth of the matter asserted in the out-of-court statement by Mrs. Smith. If, however, the testimony is offered to prove that Mrs. Smith can speak English, then the testimony is not hearsay because it is not offered to prove the truth of the matter asserted in the out-of-court statement. However, the testimony is only admissible if Mrs. Smith’s ability to speak English is relevant to the case.

*Comment:*

Why should the complicated and confusing condition be added that the out-of-court statement is only hearsay when “offered for the truth of the matter asserted?” The answer is that hearsay is considered untrustworthy because the speaker of the out-of-court statement has not been placed under oath and cannot be cross-examined concerning their credibility. In the previous example, Mrs. Smith cannot be cross-examined concerning her statement that the decedent’s wife had a bottle of arsenic in her medicine cabinet, since witness X, and not Mrs. Smith has been called to give this testimony. However, witness X has been placed under oath and *can* be cross-examined about whether Mrs. Smith actually made this statement, thus demonstrating that she could speak English. When offered to prove that Mrs. Smith could speak English, witness X’s testimony about her out-of-court statement is not hearsay.

Remember, there are responses to many of these objections that the examining attorney can make after the objection is raised and they are recognized by the judge to respond.

### III. Rules Unique to Mock Trial

The following are explanations and examples of rules/objections that are unique to mock trial.

**A. Invention of fact on direct examination:** If a witness gives testimony on direct that is beyond the scope of their witness statement, the cross-examining attorney could say “Move to strike the testimony concerning ... as beyond the scope of the case materials.” If the attorney examining the witness asks a question that calls for a witness to go beyond their witness statement, opposing counsel could object to say “Your Honor, objection on the basis that opposing counsel’s question seeks evidence that is outside the record in this case.”

i. *Example:*

1. If witness X does not discuss in their witness statement whether or not they saw arsenic in the medicine cabinet of the decedent’s wife, they cannot be asked to testify at trial about whether they had arsenic in their medicine cabinet.

**B. Use of outside factual research:** “The opposing counsel is making reference to materials not included in the Case File. Specifically, they are referencing [e.g. guidelines created by the Federal Aviation Agency], however this was not included in the case materials.”

**C. Use of outside legal research:** “Opposing counsel is citing to [a case/a part of a case] that was not included in the materials.”

- a. Explanation: Students may make use of legal research that is provided in the Case Law section of the materials, with the limitation that they are only permitted to reference the portions included or cited to within the included cases.

i. *Example:*

1. In the case materials, which may include *Kyllo v. United States*, students may see the following passage:

“At the very core” of the *Fourth Amendment* “stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.” *Silverman v. United States*, 365 U.S. 505, 511, 81 S.Ct. 679, 5 L.Ed.2d 734 (1961). With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no.

If the case materials do not also include *Silverman v. United States*, the students may only reference the portion quoted.

### IV. Trial Procedures

The following are examples of trial procedures. This is not meant to serve as a script, rather it may be used as a guideline to follow as you progress through the trial.

#### A. Examining a Witness

a. **Direct Examination - Form of Questions**

Witnesses should be asked neutral questions and may not be asked leading questions on direct examination. Neutral questions are open-ended questions that do not suggest the answer and that usually invite the witness to give a narrative response. A leading question is one that suggests to the witness the answer desired by the examining attorney and often suggests a “yes” or “no” answer.

*Examples:*

1. **Proper direct examination questions:**
  - a. What did you see?
  - b. What happened next?
2. **Leading questions (not permitted on direct):**
  - a. Isn't it true that you saw the defendant run into the alley?
  - b. After you saw the defendant run into the alley, you called the police, didn't you?

**b. Cross-Examination - Form of Questions**

An attorney should usually, if not always, ask leading questions when cross-examining the opponent's witness. Open-ended questions tend to evoke a narrative answer, such as "why" or "explain," and should be avoided. (Leading questions are not permitted on direct examination because it is thought to be unfair for an attorney to suggest answers to a witness whose testimony is already considered to favor that attorney's side of the case. Leading questions are encouraged on cross-examination because witnesses called by the opposing side may be reluctant to admit facts that favor the cross-examining attorney's side of the case.) However, it is not a violation of this rule to ask a non-leading question on cross-examination.

*Examples:*

1. **Good leading cross-examination question:**

Isn't it true that it was almost completely dark outside when you say you saw the defendant run into the alley? (This is a good question where the witness's statement says it was "almost completely dark," but a potentially dangerous question when the statement says it was "getting pretty dark out.")
2. **Poor cross-examination question:**

How dark was it when you saw the defendant run into the alley? (The witness could answer, "It wasn't completely dark. I could see him.")

**c. Re-Direct Examination**

Re-direct examination is limited to the scope of cross-examination. It is intended to clarify previous testimony and/or to help your witness recover from a damaging cross-examination. Re-direct is not mandatory and should not be used simply to repeat points that were already made during direct examination.

*Examples:*

1. **Cross-Examination of physician called by Plaintiff in murder case:**

Attorney:	Doctor, you testified on direct that the defendant died of arsenic poisoning, correct?
Witness:	Yes.
Attorney:	Isn't it true that you have a deposition in which you testified that you did not know the cause of death?
Witness:	Yes, that's true.

***Re-Direct:***

Attorney: Doctor, why did you testify in your deposition that you did not know the defendant's cause of death?

Witness: I had not yet received all of the test results which allowed me to conclude the defendant died of arsenic poisoning.

2. ***Cross-Examination:***

Attorney: Doctor, isn't it true the result of test X points away from a finding of arsenic poisoning?

Witness: Yes.

***Re-Direct:***

Attorney: Doctor, why did you conclude that the defendant died of arsenic poisoning even though test X pointed away from arsenic poisoning?

Witness: Because all of the other test results so overwhelmingly pointed toward arsenic poisoning, and because test X isn't always reliable.

*Comment:* As a general rule, it is not advisable to ask a question to which you don't know the answer.

**d. Re-Cross-Examination**

After re-direct, additional questions may be asked by the cross-examining attorney, but such questions are limited to matters raised on re-direct examination. Re-cross is not mandatory and should not be used simply to repeat points that were already made during cross-examination.

*Example:*

Assume the cross-examination in the example above has occurred. A good re-cross-examination would be the following:

Attorney: Doctor, isn't it true that when you gave your deposition you had received all of the test results except the result of test X?

Witness: Yes, that's true.

*Comment:* The cross-examining attorney would then argue in the closing argument that the doctor testified in their deposition that they did not know the cause of death at that time and the only test result received after the deposition pointed away from arsenic poisoning.

**e. Refreshing Recollection (Rule 612)**

If a witness is unable to recall information in their witness statement or contradicts the witness statement, the attorney calling the witness may use the witness statement to help the witness remember.

*Example:*

Witness cannot recall what happened after the defendant ran into the alley or contradicts witness statement on this point:

Attorney: Mr./Ms. Witness, do you recall giving a statement in this case?  
Witness: I do not recall.  
Attorney: Your Honor, may I approach the witness?  
(Permission is granted.)  
I'd like to show you a portion of the summary of your statement, and ask you to review the first two paragraphs on page three.  
(Witness reads statement)  
Attorney: Having had an opportunity to review your statement, do you now recall what happened after the defendant ran into the alley?

**f. Impeachment (Rule 607)**

On cross-examination, the cross-examining attorney may impeach the witness. Impeachment is a cross-examination technique used to demonstrate that the witness should not be believed. Impeachment is accomplished by asking questions which demonstrate either (1) that the witness has now changed their story from statements or testimony given by the witness prior to the trial, or (2) that the witness's trial testimony should not be believed because the witness is a dishonest and untruthful person.

Impeachment differs from the refreshing recollection technique. Refreshing recollection is used during direct examination to steer a favorable, but forgetful, witness back into the beaten path. Impeachment is a cross-examination technique used to discredit a witness's testimony.

*Examples:*

1. ***Impeachment with prior inconsistent statement:***  
Attorney: Mr. Jones, you testified on direct that you saw the two cars *before* they actually collided, correct?  
Witness: Yes.  
Attorney: You gave a deposition in this case a few months ago, correct?  
Witness: Yes.  
Attorney: Before you gave that deposition, you were sworn in by the bailiff to tell the truth, weren't you?  
Witness: Yes.  
Attorney: Mr. Jones, in your deposition, you testified that the first thing that drew your attention to the collision was when you heard a loud crash, isn't that true?  
Witness: I don't remember saying that.  
Attorney: Your Honor, may I approach the witness?

(Permission is granted.) Mr. Jones, I'm handing you the summary of your deposition and I'll ask you to read along as I read the second full paragraph on page two, "I heard a loud crash and I looked over and saw that the two cars had just collided. This was the first time I actually saw the two cars." Did I read that correctly?

Witness: Yes.

Attorney: Thank you, Mr. Jones.

2. ***Impeachment with prior dishonest conduct:***

Attorney: Student X, isn't it true that last fall you were suspended from school for three days for cheating on a test?

Witness: Yes.

**B. Witness Testimony**

**a. Fair Extrapolation**

The limits on fair extrapolation apply only to cross-examination. No extrapolation is permitted on direct examination.

An accident reconstruction expert (Mr. Smith) has testified that the accident was caused by the failure of the defendant to maintain an assured clear distance ahead. The defendant has claimed that they were undergoing a type of epileptic seizure when the driver ahead stopped abruptly. The accident reconstructionist testifies that even a person experiencing this kind of epileptic seizure would have seen the car brake abruptly. On cross-examination, opposing counsel wishes to explore this testimony.

*Examples:*

1. ***Unfair Extrapolation***

Attorney: But you're not a neurologist, are you, Mr. Smith?

Witness: As a matter of fact, I have a Ph.D. in Neurology from Johns Hopkins University and have written extensively on epileptic seizures.

*If there is no hint in the case materials that Mr. Smith has expertise in neurology, and their expertise makes a material difference in the outcome of the case or their ability to reconstruct the accident, it would be regarded as an unfair extrapolation. If, however, their expertise is **not** materially related to the outcome of the case (e.g. they testify they are an expert in aneurysms but not in epileptic seizures), then the extrapolation would be unnecessary but not unfair.*

2. ***Extrapolation necessitated by the question***

Attorney: Have you testified before as an expert in accident reconstruction, or is this the first time that you have ever testified?

Witness: I have testified in 27 trials.

*It may be reasonable for the expert to claim they have testified in 27 trials, if their age and background make that plausible, even if there is nothing in the case materials to reflect an answer to that question. It is an extrapolation necessitated by the question.*

**b. Opinion Testimony by Non-Experts**

Most witnesses are non-experts. If a witness is a non-expert, the witness's testimony in the form of opinions is limited to opinions that are rationally based on what the witness saw or heard and that are helpful in explaining the witness's testimony. Non-experts (lay witnesses) are considered qualified to reach certain types of conclusions or opinions about matters which do not require experience or knowledge beyond that of the average lay person. Note, however, that the opinion must be *rationally* based on what the witness saw or heard *and* must be helpful in understanding the witness's testimony.

*Examples:*

1. Witness X, a non-expert, may testify that the defendant appeared under the influence of alcohol. However, it must be shown that this opinion is *rationally* based on witness X's observations by bringing out the facts underlying the opinion, e.g., the defendant was stumbling; their breath smelled of alcohol; their speech was slurred. If witness X thinks the defendant was under the influence because they had a strange look in their eye, then the opinion should not be permitted because it is not sufficiently rational and has potential for undue prejudice.
2. Witness X, a non-expert, may not testify that in his opinion the decedent died of arsenic poisoning, since this is not a matter that is within the general knowledge of lay persons. Only an expert, such as a forensic pathologist, is qualified to render such an opinion.

**c. Opinion Testimony by Experts**

Only persons who are shown to be experts at trial may give opinions on questions that require special knowledge beyond that of ordinary lay persons. An expert must be qualified by the attorney for the party for whom the expert is testifying. Before a witness can testify as an expert, and give opinions in their area of expertise, a foundation must be laid for their testimony by introducing their qualifications into evidence. In a sense, every witness takes the stand as a non-expert, and the questioning attorney must then establish the witness's expertise to the court's satisfaction for the witness to be able to testify as an expert. This is usually

accomplished by asking the expert directly about their background, training and experience.

*Example:*

Attorney: Doctor, please tell the jurors about your educational background.  
Witness: I attended Harvard College and Harvard Medical School.  
Attorney: Do you practice in any particular area of medicine?  
Witness: I am board-certified forensic pathologist. I have been a forensic pathologist for 28 years.

It is up to the court to decide whether a witness is qualified to testify as an expert on a particular topic.

### **C. Evidence**

#### **a. Introduction of Physical Evidence (Rule 901)**

An exhibit is presented to the court through the testimony of a witness with knowledge of the exhibit. Exhibits may not be altered to give either side an unfair advantage.

*Example:*

Attorney: Your Honor, we have marked this one-page document as Plaintiff's Exhibit 1 (or Defendant's Exhibit A). Let the record reflect that I am showing Plaintiff's Exhibit 1 (or Defendant's Exhibit A) to opposing counsel. (Exhibit is shown to opposing counsel.) Your Honor, may I approach the witness?  
Judge: You may.  
Attorney: Witness X, I'm showing you what has been marked as Plaintiff's Exhibit 1. Do you recognize that exhibit?  
Witness: Yes.  
Attorney: Could you explain to the court what that is?  
Witness: It's a map of the accident scene. (At this point, the attorney may ask the witness any additional relevant questions about the exhibit, and then give it to the judge.)