

INSTRUCTIONS AND RULES FOR THE COMPETITION

The Genesee County Mock Trial Competition is governed by the instructions and rules set forth below. They should be studied carefully before beginning your preparation of the case. These instructions and rules are designed to promote/insure excellence in presentation and fairness in judging all trials.

We want to thank the Michigan Center for Law Related Education for their assistance with competition instructions and rules.

I. GENERAL INSTRUCTIONS

A. RULES

All trials will be governed by the Michigan Rules of Evidence. No additional sources of authority should be cited during a trial.

B. THE PROBLEM

The problem consists of witness statements, stipulations, and jury instructions. Witness statements are not changed to create a more favorable fact situation.

C. COMPETITION STRUCTURE

Sides – plaintiff and defense – and school pairings will be randomly determined prior to the Mock Trial.

II. THE TRIAL

A. TEAM PRESENTATION

Schools must be prepared to present both the plaintiff and the defense side of the case. In a trial, each team will furnish attorneys and witnesses for its own side. The case will be tried to a jury.

B. TEAM COMPOSITION

Teams may consist of from four to nine members assigned to roles representing the plaintiff and defense sides, including witnesses. (This does not include jurors.) Teams may also have two alternate members.

1. Attorneys

- a. Two attorneys from a team shall participate in each trial.
- b. One attorney shall give the opening statement and the other attorney shall give the closing argument(s). Each attorney shall conduct the direct examination of one of the witnesses for the attorney's side and the cross examination of one opposing witness.
- c. Whichever attorney conducts the direct examination of a witness shall also conduct the redirect examination of the witness and shall make and argue the objections, if any, to the cross examination of the witness. Whichever attorney conducts the cross examination of a witness shall also make and argue the objections, if any, to the direct and redirect examination of that witness. Attorneys may confer with one another at any time. (However, repeated or lengthy consultation may be considered by some judges to weaken the quality of an attorney's performance.)
- d. When testifying, witnesses may not refer to any notes.

- e. On cross examination, the examining attorney may not impose restrictions on the form of the witness' answer, except that the answer must be responsive. However, the Presiding judge can instruct the witness to answer the questions "yes" or "no", if possible. If it is not possible for the witness to respond yes or no, the judge may instruct the witness to respond to the best of his/her ability.
- f. Witnesses may not be recalled by the other side.

C. WITNESS STATEMENTS

1. Witness Bound by Statement

A witness' statement is to be treated as a statement made by the witness under oath. Each witness must admit that s/he made the statement and that the signature on the statement is authentic. Minor extrapolations of facts not in the record are allowed, provided they may be reasonably inferred from the case materials, since some additional information may be necessary to make the case realistic. As an example of a fair extrapolation, background information such as date or place of birth would be a minor extrapolation and would be allowed to amplify or humanize the case. Unfair extrapolations that would not be allowed include information pivotal to the particular facts at issue. **Only those facts which are neutral to both sides are fair extrapolations.** If you have a question as to whether a particular added fact would be allowable background information, or if you believe it might be an unfair extrapolation, do not add the questionable fact. As a general rule of thumb, the more the "supplemental" information helps your case, the more cautious you should be in adding it to the witness' testimony. **When in doubt, leave it out!**

2. Unknown Information

It is virtually impossible to provide witnesses with detailed answers to every conceivable question that attorneys can ask. The witness statements are not intended as a complete life history, and for the most part, information not in the statements will be irrelevant and should be subject to objection. If an attorney's question solicits unknown information, the witness may supply an answer of his/her choice, so long as it does not materially affect the witness's testimony. Try to avoid a rigid mechanical approach to the trial (the witness statements are not scripts), but stay within the bounds of honest competition. Just as in our legal system, lawyers must deal with the facts as they exist.

3. Unfair Extrapolations

These alternatives are available for dealing with potentially unfair extrapolations by witnesses or attorneys:

- a. A team may best attack unfair extrapolations through impeachment and closing arguments.
- b. Each witness should understand that if s/he is asked for information not contained in the witness statement, s/he must either give an answer which is consistent with the statement and does not materially affect the balance of the case, or if the question otherwise would elicit an unfair extrapolation, the witness may answer, "there is no information in the statement of facts to answer this question."
- c. Attorneys for the opposing team may refer to this Rule in a special objection, such as "unfair extrapolation" or "This information is beyond the scope of the statement of facts".

4. Judge's Rulings

- a. No extrapolation has occurred.

- b. A fair extrapolation has taken place.
- c. An unfair extrapolation has taken place and the testimony in question will be stricken from the record.
- d. Ruling taken under advisement. (After another question or answer, the judge may rule or respond to another objection.)

5. Final Decision on Extrapolations

The decision of the Presiding judge regarding extrapolations or other evidentiary matters is final. Extrapolations should be dealt with openly during the course of the trial. This is not an area subject to dispute. The purpose of the ruling is to avoid an irrelevant digression from the statement of facts whether through attorney questions or witness response. Participants should understand that any ruling by a judge is not an indication of the eventual outcome of the trial. Do not become overly obsessed with handling extrapolations.

D. PREPARATION AND SUPPLEMENT MATERIAL

The Mock Trial packet contains all materials necessary to participate. **Teams may enter into evidence only those documents and exhibits given in the official mock trial materials.** No enlargements of any kind shall be used during the trials unless provided by the Law Day Committee. If a chalkboard is available in a courtroom, it may be used during the course of the trial. Attorneys are encouraged to call the court's attention to particular parts of the stipulation and the Competition Rules that support the attorney's position.

E. TIME LIMITS

The Mock Trial may not exceed two hours. Time limits are mandatory. The presiding judge will have the ultimate responsibility for enforcing these time limits.

Plaintiff's Opening Statement	5 minutes
Defendant's Opening Statement	5 minutes
Plaintiff's Direct Examination	21 minutes (7 per witness)
Defendant's Cross Examination	21 minutes (7 per witness)
Defendant's Direct Examination	21 minutes (7 per witness)
Plaintiff's Cross Examination	21 minutes (7 per witness)
Plaintiff's Closing Argument (incl. rebuttal)	8 minutes
Defendant's Closing Argument	8 minutes
Jury Instructions	4 minutes
Participants, Judge's Brief Comments	6 minutes

The time for making and arguing objections is to be counted as part of the time of the side examining the witness. If the presiding judge believes one team is deliberately using up the other team's time with objections, s/he may address the problem by allowing the other team additional time. Whenever there is an allegation of a violation, timing will halt.

Attorneys are not required to use the entire time allotted to each part of the trial. It should be noted however, that time left over in one part of the trial **cannot** be carried over to another part of the trial.

F. SEQUESTERING WITNESSES

Witnesses may not be sequestered.

G. MOTIONS

Attorneys may make a motion for a directed verdict or dismissal of the case, however, this motion will be taken under advisement and the trial will continue. An attorney may make a motion for and the presiding judge may grant a recess in the event of an extreme health or safety emergency.

III. TRIAL PRESENTATION

A. COURTROOM DECORUM

Observe the following rules in the courtroom at all times: No food or drink is allowed in the courtroom. Do not smoke in the courtroom. Cellular telephones and pagers are not allowed. All participants must be properly attired. Rise when addressing the Judge. Direct all remarks to the judges or witness - **NEVER** to opposing counsel. Natural movement of attorneys during trial is encouraged. However, while examining witnesses do not approach the bench, jury box, or witness without permission from the presiding judge.

B. PRESENTATION OF THE TRIAL

The following remarks are intended to aid teams in "technique". They are not to be interpreted as rules unless so indicated.

1. Opening Statements

Purpose: To introduce yourself and your client and to acquaint the jury and judge with the nature of the case. Outline the case from your point of view and mention key witness' testimony and tell the jury and judge what relief you are seeking.

Avoid: Too much narrative detail about witness testimony and exaggeration and overstatement of facts which may not be proven. Do not argue or discuss the law as it is not permitted here. Try to avoid reading too much. Do not repeat undisputed facts.

2. Presenting Evidence

a. Direct Examination

Purpose: To present evidence which warrants submission of your case to the jury and judge. Present facts which support your case with clarity. Try to show your witnesses at their best.

Avoid: Complex and verbose questions. Keep it simple. Take the witness through his/her testimony by small steps. Don't attempt to elicit conclusions – that is the jury's job. Avoid redundant, monotonous questioning. Use care in allowing narrative testimony as it could prove dangerous if your witness gets out of control. When the facts are in evidence, stop questioning the witness.

b. Cross examination

Purpose: To discredit the witness and to discover flaws in his/her testimony. Try to secure admissions which help your case.

Avoid: Hostility toward the witness – juries and judges usually resent it. Don't give the witness a chance to clarify damaging statements. When you have an answer favorable to your side, drop the matter and wait for closing arguments to emphasize the point.

Impeachment: If testimony is given which you feel contradicts the witness' statement, wait until cross examination to confront the witness with the inconsistency. A witness' testimony may be impeached by asking the witness whether s/he has ever testified differently in a signed statement. The attorney should ask the witness whether

the statement was made under oath, at a time much closer to the events in controversy, and contained all that the witness could then remember. The attorney can show the witness the statement (first showing it to the judge and opposing counsel) and ask him/her to admit s/he made it and signed it. The attorney can read aloud, or ask the witness to read aloud, the part of the statement the attorney claims is inconsistent with the witness' testimony. The attorney may then further question the witness about the inconsistency. The attorney may then want to:

- (1) Leave the matter and point out in closing argument the contradiction between the statement and the witness' testimony (both of which were made under oath),
- (2) Ask the witness why his/her testimony is different today under oath than it was when s/he gave the statement which was also under oath and given much closer in time to the events in question [**NOTE: It can be dangerous to give a witness an opportunity to explain such a discrepancy because you may not like the answer you get!**] or
- (3) Ask the witness whether s/he was lying under oath when s/he gave the statement or lying under oath today when s/he testified [**NOTE: This can also be a dangerous question unless the contradiction is very clear, definite, and material.**] Witnesses must admit making their statements when directly confronted with the question. *"Do you remember making and signing this statement under oath?"* or a similar question. [See II C 1] Don't waste time impeaching on matters that aren't material to your case.

c. Introduction of Evidence

The following steps will be used for the introduction of evidence.

- (1) All evidence should be pre-marked as exhibits before the trial begins.
- (2) Ask for permission to approach the bench. *"Your Honor, may I approach the bench to show you what has been pre-marked as Plaintiff's/Defendant's Exhibit NO. 1?"*
- (3) Show the exhibit to opposing counsel.
- (4) Ask for permission to approach the witness.
- (5) Give the exhibit to the witness and step back from the witness. *"I now hand you what has been marked as Plaintiff's/Defendant's Exhibit No. 1 for identification."*
- (6) Ask the witness to identify the exhibit. *"Would you identify it please?"*
- (7) Witness answers with identification only.
- (8) Offer the exhibit into evidence. *"Your Honor, we offer Plaintiff's/ Defendant's Exhibit No. 1 into evidence at this time. The authenticity of this exhibit has been stipulated."*
- (9) Court: *"Plaintiff's/Defendant's Exhibit No. 1 is admitted."*
- (10) Once the exhibit is admitted into evidence, the attorney may now solicit testimony on its contents.
- (11) After completion of questions regarding an exhibit, return it to the judge.

d. Objections

Purpose: To present to the judge a rule of evidence which would bar an answer to the question asked (or result in striking from the record the answer, if already given). Special objections may also be used to bring a procedural problem to the judge's

attention, such as an unfair extrapolation or continuing past the expiration of allowable time.

Procedure: Attorneys should stand to make objections. They should direct all objections and arguments to the Presiding judge. In making objections, counsel should stand as soon as the objectionable question is asked and say "*I object, your Honor*", "*Your Honor, I object*" or "*Objection*" and then state the basis for the objection.

Allowable Objections:

The following shall be valid objections to questions posed to a witness:

- (1) **Leading Questions:** "*Counsel is leading the witness*" or "*The questions are leading.*" (A leading question is one which suggests the answer.) Leading questions are generally not allowed on direct examination but are proper on cross examination. The Presiding judge may allow leading questions on direct examination as to preliminary matters.
- (2) **Hearsay:** "*The question calls for hearsay.*" Hearsay is evidence of an out-of-court statement offered to prove the truth of the matter asserted in the statement. If a witness makes a hearsay statement the attorney should say "*The witness' answer is based on hearsay, and I ask that the statement be stricken from the Record.*" **Exceptions to The Hearsay Rule:** The following, which would otherwise fall within the definition of hearsay, are not excluded from evidence by this hearsay rule:
 - (a) **Admission Against Interest:** Hearsay is admissible if the out-of-court statement was made by a party in the case and contains evidence which goes against that party's side. Admissions against interest are permitted because they are thought to be more trustworthy than other hearsay, since people generally do not make statements that are against their own interest unless they are true.
 - (b) **Excited Utterance:** A statement relating to a startling event or condition by someone other than the witness testifying is admissible when the statement was made under the stress of excitement caused by the event or condition.
 - (c) Any other statement made under circumstances which, in the judgment of the Presiding judge gives substantial assurance of the truth of the matter asserted.
- (3) **Irrelevant:** "*The question is irrelevant.*" A question is irrelevant if it seeks information which has no logical bearing on the existence of a material issue before the court, or if its logical bearing is small in comparison to its inflammatory nature.
- (4) **Lacks Personal Knowledge/No Proper Foundation:** "*No proper foundation....*" or "*The witness lacks personal knowledge....*" This objection asserts that there has been no showing that the witness has personal knowledge about the matter to which the question is directed. For example, if there has been no evidence that the witness was present at a certain event, there is no foundation for that witness to testify as to what occurred at that time.
- (5) **Assumes Facts Not in Evidence:** "*The question assumes facts not in evidence.*"
- (6) **Argumentative:** "*Counsel is arguing with the witness.*" The attorney is not

asking a question, but instead is arguing with the witness or making an argument to persuade the jury.

- (7) **Asked and Answered:** *"The question has been asked and answered."* Note: on cross examination an attorney can ask a question previously asked on direct examination.
- (8) **Badgering the Witness:** *"Counsel is badgering the witness."*
- (9) **Narrative Statement:** *"The question calls for a narrative statement."* Questions such as "what happened on" a certain date call for a narrative from the witness which prevents opposing counsel from objecting in advance to objectionable material. Questions should be more specific, such as *"Who was present?"*, *"Did you see that person do anything at that time?"*, *"What did you see him/her do?"*, *"Did you see anyone else do anything at that time?"* An attorney may ask *"What happened next?"*
- (10) **Opinion:** *"The question calls for the witness' opinion."* However, opinion evidence is proper on a subject on which the witness has been qualified as an expert or on which a non-expert's opinion would be helpful to understand the evidence.
- (11) **Unfair Extrapolation:** *"Unfair extrapolation"* or *"This information is beyond the scope of the statement or facts."* [See IIC3]
- (12) Any other objections based on reason or justice, including but not limited to *"The question is ambiguous."*

e. **Redirect/Recross (Optional)**

Purpose: To rehabilitate a witness or repair damage done by your opponent.

NOTE: If the credibility or reputation for truthfulness of the witness has been attacked on cross examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness' truth-telling image in the eyes of the jury. Redirect examination is limited to issues raised by the attorney on the cross examination. If questions on other matters are asked, a proper objection would be: "Objection. Counsel is asking the witness about matters that did not come up in cross examination."

3. **Closing Arguments**

Purpose: To summarize your case. Point out testimony which supports your case and that which damages your opponent's. This is where you put the pieces together for the jury and the judge. Argue what you feel is important and discard the unimportant. Be an advocate - forcefully argue your point of view. Be dynamic - avoid a boring view of the facts. State your case so you are sure it is fully understood. Correct any misunderstandings that the jury or judge may have. You may use all exhibits which have been admitted into evidence. Point out bias, credibility, or self-interest of witness.

Avoid: Assuming the judge and jury have understood the impact of all of the testimony. Be cautious in using ridicule. Avoid illogical or confusing argument. Organize in advance by anticipating your opponent's argument. Avoid weak words, such as "we believe" and "we think", etc.

NOTE: The plaintiff's rebuttal is limited to the scope of the defendant's closing argument.

IV. ETHICAL CONDUCT

A. CODE OF ETHICAL CONDUCT

The purpose of the Genesee County Mock Trial Competition is to stimulate and encourage a deeper understanding and appreciation of the American legal system. This purpose is accomplished by providing students the opportunity to participate actively in the learning process. Education of high school students is the primary goal of the mock trial program. Healthy competition helps to achieve this goal. Other important objectives include improving proficiency in speaking, listening, reading and reasoning skills; promoting effective communication and cooperation between the educational and legal communities; providing an opportunity to compete in an academic setting; and promoting cooperation among students of diverse interests and abilities.

As a means of diligent application of the Genesee County Mock Trial Competition Rules, the Law Day Committee has adopted the following Code of Ethical Conduct for all participants:

1. Students promise to compete with the highest standards of deportment, showing respect of their fellow students, opponents, judges, evaluators, attorney-coaches, teacher-sponsors and mock trial personnel. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Students will avoid all tactics they know are wrong or in violation of the rules, including the use of unfair extrapolations. Students will not willfully violate the rules of the competition in spirit or in practice.
2. Teacher-Advisors agree to focus attention on the educational value of the Mock Trial Competition. They shall discourage willful violations of the rules. Teachers will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the competition's rules and this Code of Ethical Conduct.
3. Attorney-Advisors agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the competition's rules and this Code of Ethical Conduct. Attorney-Advisors are reminded that they are in a position of authority and thus serve as positive role models for the students.
4. All participants (including school observers) are bound by all sections of this code and agree to abide by the provisions. Teams are responsible for insuring that all observers are aware of the code.
5. The Code of Ethical Conduct governs all participants, observers, guests, and parents at the competition.

B. BAN ON COACHING

1. Once the trial begins no coaching is permitted by **anyone** for the duration of the trial. Student attorneys may consult with one another and with their witnesses.
2. To avoid even the appearance of impropriety, the attorneys trying the case and the witnesses should not engage in any conversation with any other team members, coaches or observers until after closing arguments.
3. Any student team member (including team members not participating in the trial) who observes any violation of this rule shall report it **immediately** to the presiding judge who shall inquire into the circumstances of the allegation. The presiding judge may penalize any team for a violation of this rule.

C. STATEMENT OF PRINCIPLES FOR MOCK TRIAL JURORS

The mock trial competition, because it does represent a "mock" situation, obviously does not involve the "life and death" circumstances that would apply in an actual Circuit Court jury trial. On the other hand, in order that all mock trial participants, including those students who assume the role of jury members, might achieve maximum benefits (educational and otherwise) from their participation, mock trial jurors are strongly urged to fill their roles with the following principles in mind:

1. Like real jurors, mock trial jurors should do their utmost to pay careful attention to, and follow, the instructions given them by the judge at the beginning of the trial.
2. Mock trial jurors should recognize that the many hours of hard work and preparation undertaken by the other participants in the mock trial competition are deserving of the mock trial jurors' careful attention during the course of the trial presentation.
3. Similarly, mock trial jurors should do their utmost to respect and enhance the efforts and experience of all other mock trial participants by paying careful attention to, and following, the court's instructions at the conclusion of the trial.
4. Consistent with these principles, *and perhaps more important than any one of them*, mock trial jurors should make every effort to conduct their jury deliberations, to the extent humanly possible, as though the ultimate decision made were a "real" one, with "real" consequences for "real" people.

V. VIOLATION OF COMPETITION RULES DURING TRIAL

A. RULE VIOLATIONS

Any violation of a competition rule observed during a trial should **immediately** be called to the attention of the Presiding judge by one of the attorneys trying the case. (Note: violations of IV D may be raised only by the attorneys trying the case.)

VI. JUDGES INSTRUCTIONS

A. MATERIALS

All judges should have a copy of the competition materials.

B. ROLE OF PRESIDING JUDGE

The presiding judge has a delicate task. A trial is an adversarial proceeding. Yet the central goal is to give the young people participating a positive educational experience. Obviously the judge must be evenhanded. In addition, the judge should take special care to avoid intimidating the student lawyers and witnesses, so they feel comfortable and free to act at the true level of their capacity. The judge should

be encouraging to both sides and still maintain the essential form of a trial.

C. ENFORCEMENT OF CODE OF ETHICAL CONDUCT

To assist in enforcing the code, presiding judges, upon taking the bench before the start of the trial, will handle the following pre-trial matters:

1. Ask each side if it is ready for trial. Ask each side to provide the judge with a copy of the team roster. Ask each side for a witness list (three) of those to be called. Ask each member of the team to rise and identify himself/herself by name and role.
2. The presiding judge will remind the participants about the ban on coaching.
3. The presiding judge will remind the jurors about the Statement of Principles For Mock Trial Jurors.

D. QUESTIONS REGARDING MOCK TRIAL RULES

If questions arise regarding application of the Mock Trial Rules, the presiding judge should entertain arguments by the attorneys regarding construction of the rules and should encourage the attorneys to make reference to the rule in question. The presiding judge has the sole authority to make decisions about the conduct of the trial.