

concerning timekeeping will be considered by judges when scoring for the round.

Team Manager (Virtual)

Teams may wish to have a person acting as Team Manager. This person can be responsible for tasks such as keeping phone numbers of all team members and ensuring that everyone is well-informed of meeting times, Q&A posts, and so on. In case of illness or absence of a team member, the manager could keep a record of all witness testimony and a copy of all attorneys' notes so that someone else may fill in. This individual could also serve as the timekeeper if needed. This position is not required for the competition.

Rules of the Competition

General Rules of the Competition (Virtual & In-Person)

Administration

Rule 1. Rules

All trials will be governed by the Rules of the Oregon High School Mock Trial Competition and the Federal Rules of Evidence – Mock Trial Version.

Rules of the competition, as well as rules of courthouse and courtroom decorum and security, must be followed. Civics Learning Project and Regional Competition Coordinators have the authority to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violations, or breaches of decorum that affect the conduct of a trial or that impugn the reputation or integrity of any team, school, participant, court officer, judge, or mock trial program. Questions or interpretations of these rules are within the discretion of Civics Learning Project and its decisions are final.

Rule 2. The Problem

The problem is a fact pattern that contains statements of fact, stipulations, witness statements, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

Rule 3. Witness Bound By Statements

Each witness is bound by the facts contained in their own witness statement, also known as an affidavit, and/or any necessary documentation relevant to their testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If on direct examination, an attorney asks a question that calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 4, Unfair Extrapolation.

If in cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement and does not materially affect the witness's testimony. A witness may be asked to confirm (or deny) the presence (or absence) of information in their statement.

Example. A cross-examining attorney may ask clarifying questions such as, “Isn’t it true that your statement contains no information about the time the incident occurred?”

MVP Tip: In cross-examination, anticipate what you will be asked and prepare your answers accordingly. Isolate all the possible weaknesses, inconsistencies, or other problems in your testimony and be prepared to explain them as best you can. Be sure that your testimony is never inconsistent with, nor a material departure from, the facts in your statement. You may be impeached if you contradict what is in your witness statement.
See Rule 607.

MVP Tip: As a witness, you will supply the facts in the case. You may testify only to facts stated in or reasonably inferred from your own witness statements or fact situation. On direct examination, when your side's attorney asks you questions, you should be prepared to tell your story. Know the questions your attorney will ask and prepare clear answers that contain the information that your attorney is trying to elicit. However, do not recite your witness statement verbatim. Know its content beforehand so you can put it into your own words. Be sure that your testimony is never inconsistent with, nor a material departure from, the facts in your statement.

Rule 4. Unfair Extrapolation

Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. A fair extrapolation is one that is neutral. Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting unfair extrapolation.

If a witness is asked information not contained in the witness' statement, the answer must be consistent with the statement and may not materially affect the witness's testimony or any substantive issue of the case.

Attorneys for the opposing team may refer to *Rule 4* when objecting and refer to the violation as "unfair extrapolation" or "outside the scope of the mock trial material." Possible rulings a judge may give include:

- no extrapolation has occurred;
- an unfair extrapolation has occurred;
- the extrapolation was fair; or
- ruling taken under advisement.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings. See *Rule 602* and *Rule 3*. The decision of the Presiding Judge regarding extrapolation or evidentiary matters is final.

Rule 5. Gender of Witness

All witnesses are gender neutral. Personal pronouns in witness statements indicating gender of the characters may exist but are inadvertent. Any student may portray the role of any witness of any gender. Teams are requested to indicate members' gender pronouns on the Team Roster for the benefit of judges and opposing counsel.

Rule 6. Student Accommodations (Students with Disabilities)

The Rules of Competition will be interpreted and administered consistent with all applicable laws. Accordingly, should any applicable law require variance from these rules or accommodation of any competitor for any reason, including a legally recognized disability, that team member or their coach may apply to Civics Learning Project for accommodation, and such reasonable accommodation shall be granted. Civics Learning Project will consider all requests and conduct an individualized assessment of the student with a disability's request, to determine what reasonable accommodations can be made that will enable the student to participate to the fullest extent possible in Civics Learning Project programming (i.e., Mock Trial). These accommodations may include adjustments of the

the reasonableness of the accommodations; a request will not be granted that fundamentally alters the program. The timeliness of the request for accommodation may be material to whether an accommodation is granted. If a team is competing against a team for which an accommodation was granted, and the accommodation requires an alternation that impacts the opposing team, the team will be informed in advance of the accommodation, when possible, but will not be informed of the specific student nor their disability that led to the accommodation.

The Trial

Rule 7. Team Eligibility, Teams to State

Teams competing in the Oregon High School Mock Trial Competition must register by the registration deadline. **A school may register up to three teams.**

To participate in the state competition, a team must successfully compete at the regional level. Teams will be assigned to one of seven regions when registration is complete. Every effort is made to allow teams to compete in the region in which their school or organization is physically located. If a region assignment causes substantial hardship to a team, the Competition Coordinator may change the assignment to address the hardship.

All regional competitions will be held during the month of February 2022. Teams should be aware that the regional competition dates are subject to change by the Competition Coordinator due to scheduling requirements, availability of courtrooms, the needs of teams, or inclement weather. If dates change, teams will be notified through the Civic Learning Project’s Mock Trial Team-specific webpage.

All teams participating at the regional level must be prepared to compete at the state level should they finish among the top teams in their region. Students on the advancing team must be the same as those in the regional competition. Should a team be unable to compete in the state competition, Civics Learning Project will designate an alternate team based upon scores of the teams who competed in the Regional/Divisional Competition. If there are an odd number of teams that qualify for the state Competition, Civics Learning Project will invite a wild card team, based upon scores of the teams who competed in the Regional/Divisional Competitions who did not originally qualify for the state competition. **The state competition is scheduled for March 16th – 17th, 2024.**

The number of teams advancing to the state competition will be determined as follows:

Numbers of Teams Competing in Region/Division	Number of Teams Advancing to State
5 or less	1
6-10	2
11-15	3
16-20	4
21-25	5
More than 25	TBD by Civics Learning Project

Rule 8. Team Composition

A mock trial team must consist of a **minimum of six (6) and a maximum of eighteen (18) students**, all from the same school or organization, unless otherwise granted an exception. The timekeeper is not counted as a team member. Civics Learning Project will determine on a case-by-case basis whether a team affiliated with an organization, rather than a school, is eligible to compete.

news reporters. However, none of these roles will be used in the competition.

Note: The National High School Mock Trial Competition limits teams to a maximum of nine members with no more than six competing in any given round. Oregon's advancing team may have to change the composition of their team in order to participate at the national level.

For a virtual competition, a mock trial team is defined as an entity that includes attorneys and witnesses for both the Prosecution and Defense (students may play roles on both sides if necessary) and a timekeeper. For in-person competition, a mock trial team will be an entity that includes attorneys and witnesses for both the Prosecution and Defense (again, students may play roles on both sides if necessary), a clerk and a bailiff.

All mock trial teams must submit a Team Roster listing the team name, team code and all coaches and students to the Competition Coordinators prior to the beginning of the regional competitions. If a team fails to submit a Team Roster by the deadline, the team will forfeit their space in the competition. Once rosters have been submitted, students may not be added or substituted in a role. If there is an emergency causing a student to be absent from the competition, students must follow the emergency absence procedure contained in these materials. If a school or organization enters more than one team in the competition, team members cannot switch teams at any time for any round of regional or state competition.

Schools will provide a color to accompany the team name in order to differentiate between teams from the same school. For instance, West Ridge Green and West Ridge Purple.

For purposes of competition, all teams will be assigned a random letter code such as EQ or MZ. The code is assigned to maintain anonymity of the team for judging. Teams will be assigned a letter code by Civics Learning Project prior to the competition. Notification of the letter code assignments will be made via email to the appropriate team.

Rule 9. Team Presentation

Teams must present both the Prosecution/Plaintiff and Defense sides of the case. All team members must be available to participate in all rounds. The Competition Coordinators will make certain that both the Prosecution/Plaintiff and Defense sides of each team will have at least one opportunity to argue its side of the case at competition.

Note: Because teams are power-matched after Round 1, there is no guarantee that a team will automatically switch sides for Round 2. However, if a team argues the same side in Rounds 1 and 2, they will be guaranteed to switch sides in Round 3. Parents/observers should be made aware of this rule.

Rule 10. Team Duties

Team members should divide their duties as evenly as possible.

Opening statements must be given by both sides at the beginning of the trial. The attorney who will examine a particular witness on direct is the only person who may make objections to the opposing attorney's questions of that witness's cross-examination, and vice versa.

Each team must call all three witnesses. Failure to do so results in a mandatory two-point penalty. Witnesses must be called by their own team and examined by both sides. Witnesses may not be recalled by either side.

Rule 11. Swearing in the Witnesses

In a virtual competition, the Presiding Judge will swear in all witnesses before the trial begins as a preliminary matter using the following oath:

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

In an in-person competition, the clerk, provided by the Prosecution, swears in each witness as they are seated, using the same oath.

Rule 12. Trial Sequence and Time Limits

Each side will have a maximum of 45 minutes to present its case. The trial sequence and time limits are as follows:

Introductory Matters / Swearing-In of Witnesses	5 minutes total (conducted by Presiding Judge*)
Opening Statement	5 minutes per side
Direct and Re-Direct (optional)	20 minutes per side
Cross and Re-Cross (optional)	15 minutes per side
Closing Argument	5 minutes per side**
Judges' Calculations and Score Finalizing	7 minutes total
Total Competition Time Per Side	45 minutes

*Not included in 45 minutes allotted for each side of the case.

**Prosecution may reserve time for rebuttal at the beginning of its Closing Argument. The Presiding Judge should grant time for rebuttal (if any time remains) even if time has not been explicitly reserved.

The Prosecution delivers its Opening Statement and Closing Argument first. The Prosecution may reserve a portion of its closing argument time for rebuttal. The rebuttal is limited to the scope of the Defense's closing argument. Objections are not allowed during the Opening Statement or Closing Argument.

None of the foregoing may be waived (except rebuttal), nor may the order be changed.

The attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one segment of the trial may not be transferred to another part of the trial.

Rule 13. Timekeeping

Time limits are mandatory and will be enforced. Timing will stop during objections or extensive questioning from a judge. Timing will not stop during the admission of evidence unless there is an objection by opposing counsel.

For in-person competitions, Three- and One-Minute card warnings must be given before the end of each segment. Students will be stopped by the bailiff at the end of the allotted time for each segment. The bailiff will also time the judges' scoring time after the trial. The judging panel is allowed 7 minutes to complete their ballots. Note the judges should not confer with one another until their ballots are completed. The bailiff will notify the judges when time has elapsed.

In virtual competitions, Three- and One-Minute warnings must be given before the end of each trial segment in the chat area of the Zoom courtroom. Both timekeepers should announce the time warnings. When time has expired, timekeepers will state TIME in the chat area. If the TIME call goes unnoticed, timekeepers will unmute and announce TIME aloud. The timekeepers will also time the judges' scoring time after the trial. The judging panel is allowed 7 minutes to complete their ballots. The timekeepers will notify the judges when time has elapsed.

Rule 14. Time Extensions and Scoring

and an attorney continues without permission from the Court, the scoring judges may account for overruns in time in their scoring.

Rule 15. Supplemental Material, Illustrative Aids, Costuming

Teams may refer only to materials included in these trial materials. No illustrative aids of any kind may be used unless provided in the case materials. No enlargements of the case materials will be permitted unless a necessary accommodation for a participant's disability. In accordance with *Rule 6*, the Competition Coordinator should be made aware prior to the competition of any accommodation needed. Absolutely no props or costumes are permitted unless authorized in these case materials or by Civics Learning Project. Use of easels, flip charts, and the like is prohibited. Violation of this rule may result in a lower team score.

Rule 16. Trial Communication

Coaches, non-performing team members, alternates, and observers (each team will be allowed three observers per round in a virtual competition) shall not talk, signal, communicate with, or coach their teams during trial. This rule remains in force during any recess time that may occur. Performing team members may communicate among themselves during trial, however, no disruptive communication is allowed. In virtual competitions, communication shall not occur in the Zoom courtroom chat area. Performing students may communicate among themselves by other means (Google Chat, text message, etc.) as long as the notifications are silent and the communication is not disruptive.

In virtual competitions, only team members participating in the round and coaches may be in the same physical room with the performing students. Spectators and non-performing team members must not be in the same physical room as performing team members during the trial.

For in-person competitions, everyone in the courtroom shall turn off all electronic devices except stopwatches being used by the timekeeper(s). Non-team members, alternate team members, teachers and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in the round may sit inside the bar.

Communication in violation of these rules is grounds for disqualification from the competition. Competition Coordinators may exercise their discretion in deducting points if they find a complaint is frivolous or the conversation was harmless.

Rule 17. Viewing a Trial

Team members, alternates, coaches, teacher-sponsors, and any other persons directly associated with a mock trial team, except those authorized by the Competition Coordinator, are *not* allowed to view other teams in competition, so long as their team remains in the competition. Courtroom artists may compete in a courtroom that is not associated with their school or organization.

Rule 18. Videotaping, Photography, Media

Any team has the option to refuse participation in videotaping, audio recording, still photography, or media coverage. However, media coverage shall be allowed by the two teams in the championship round of the state competition. Trials may be recorded by participating teams as long as the opposing team approves.

Before the Trial

Rule 19. Stipulations

Stipulations shall be considered part of the record and already admitted into evidence.

Rule 20. The Record

Rule 21. Motions Prohibited

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

Rule 22. Objection During Opening & Closing Statements

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

Note: It will be the Presiding Judge's responsibility to handle any legally inappropriate statements made in the closing argument. All judges may consider the matter's weight when scoring.

Presenting Evidence

Rule 23. Objections

i. Argumentative Questions

An attorney shall not ask argumentative questions.

Example: During cross-examination of an expert witness the attorney asks, "You aren't as smart as you think you are, are you?"

ii. Lack of Proper Foundation

Attorneys shall lay a proper foundation prior to moving for the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.

iii. Assuming Facts Not in the Evidence

Attorneys may not ask a question that assumes unproven facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by the evidence (sometimes called a *hypothetical question*).

iv. Questions Calling for Narrative or General Answer

Attorneys may not ask questions that are so general that they do not call for a specific answer.

Example: "Tell us what you know about the case."

v. Non-Responsive Answer

A witness' answer is objectionable if it fails to respond to the question asked.

MVP Tip: This objection also applies to a witness who talks on and on unnecessarily in an apparent ploy to run out the clock at the expense of the other team.

vi. Repetition

Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

Rule 24. Procedure for Qualifying Expert Witness

Only a witness who is qualified as an expert may give an opinion as to scientific, technical, or other specialized knowledge in the area of their expertise. The following steps will effectively qualify an expert:

- publications they have authored.
2. Ask the Court to qualify the witness as an expert in a particular field.
 3. Once qualified, ask for witness' expert opinion on ____.

Example: The wife of Harold Hart is suing General Hospital for malpractice. She claims the hospital did not treat Mr. Hart for an obvious heart attack when he was brought to the hospital. Mrs. Hart's lawyer is examining the hospital's expert witness, Dr. Jones:

Attorney: "Dr. Jones, what is your occupation?"

Witness: "I am a heart surgeon at the Oregon Health & Science University Knight Cardiovascular Institute."

Attorney: "Where did you attend medical school?"

Witness: "I graduated from OHSU Medical School in 1985."

Attorney: "Where did you do your internship?"

Witness: "I did a two-year internship in Cardiology at Johns Hopkins University from 1985-1987."

Attorney: "Did you then specialize in any particular field of medicine?"

Witness: "Yes, I specialized in the treatment of heart attacks and cardiothoracic surgery."

Attorney: "Have you published any books or articles on the topic?"

Witness: "Yes, I have written several chapters in medical texts on heart surgery and care for patients after heart attacks."

Attorney: "Do you hold any professional licenses?"

Witness: "Yes, I am certified by both the Oregon and Washington Boards of Medical Examiners to practice medicine in both states."

Attorney: "Your Honor, I ask that Dr. Jones be qualified as an expert in the fields of cardiothoracic surgery and heart attack care."

Rule 25. Redirect, Recross

Redirect and recross examinations are permitted, provided they conform to the restrictions in Rule 611(d).

Closing Arguments

Rule 26. Scope of Closing Arguments

MVP Tip: A good closing argument summarizes the case in the light most favorable to your position. The Prosecution delivers the first closing argument and should reserve time for rebuttal before beginning. The closing argument of the Defense concludes that side's presentation.

A closing argument should:

- be spontaneous and synthesize what actually happened in the court;
- be emotionally charged and strongly appealing (unlike the calm, composed opening statement);
- review the witnesses' testimony and physical evidence presented, but not raise new facts;
- outline the strengths of your side's witnesses and the weaknesses of your opponent's witnesses;
- isolate the issues and describe briefly how your presentation addressed these issues;
- attempt to reconcile any inconsistencies in your presentation;

Critique

Rule 27. The Critique

There is no oral critique from the judging panel. At the conclusion of the trial, each judge may make a brief, general, congratulatory statement to each team. Substantive comments or constructive criticism may be included on judges' ballots at their discretion. Judges' written comments will be shared with teams following the competition.

Judging and Team Advancement

Rule 28. Decisions

All decisions of the judging panels are FINAL.

Rule 29. Composition of Panel

The judging panel will consist of four individuals: one Presiding Judge and three scoring judges. All scoring judges shall score teams using the sample ballot provided in these materials. The Presiding Judge shall not cast a ballot but provide a tiebreaker score to be used in case of a tie ballot. The scoring judges shall cast ballots based on the performances of the student attorneys and student witnesses. All judges receive the mock trial case materials, a memorandum outlining the case, orientation materials, and a briefing in a judges' orientation.

If necessary to continue competition, the Competition Coordinator may allow the Presiding Judge to score a ballot if there are only two judges to score. Alternatively, if there are only two judges to score a trial and the Presiding Judge does not complete a scoring ballot, the third ballot will be an average of the two scoring judges' scores.

Rule 30. Ballots

The term "ballot" refers to the decision made by each judge as to which side had the better performance in a round. Each judge casts a ballot based on all team members' performances. Each judge completes their own ballot. Fractional points are not allowed. The team that earns the most points on an individual judge's ballot is the winner of that ballot. In the instance of a tie ballot, the Presiding Judge's tiebreaker score will be used to determine the winner of the ballot. The team that wins the majority of the three ballots wins the round. The winner of the round shall not be announced during the competition.

Rule 31. Team Advancement

Teams will be ranked based on the following criteria in the order listed:

1. Win/Loss Record – the number of rounds won or lost by a team;
2. Total Number of Ballots – the number of judges' votes a team earned in preceding rounds;

4. **Point Spread Against Opponents** – used to break a tie, the point spread is the difference between the total points earned by the team whose tie is being broken less the total points of that team’s opponent in each previous round. The greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.

Rule 32. Power Matching

Pairings for the first round of each regional/divisional competition will be selected randomly. A power matching system will determine opponents for all other rounds. The teams emerging with the strongest record from the three rounds of regional competition will advance to the state competition. At the state competition, pairings for the first round will once again be selected randomly and the two teams emerging with the strongest records from the first four rounds will advance to the championship round, where the winner will be determined by the ballots from the championship round only.

Power matching provides that:

1. Pairings for the first round of competition at both the regional/divisional and state levels will be randomly selected;
2. All teams are guaranteed to present each side of the case at least once;
3. Brackets will be determined by win/loss record. Sorting within brackets will be determined in the following order: (a) win/loss record, (b) ballots, and (c) total points. The team with the highest number of ballots in the bracket will be matched with the team with the lowest number of ballots in the bracket; the next highest with the next lowest, and so on until all teams are paired;
4. If there is an odd number of teams in a bracket, the team at the bottom of that bracket will be matched with the top team from the next lower bracket;
5. Efforts will be made to assure teams do not meet the same opponent twice;
6. To the greatest extent possible, teams will alternate side presentation in subsequent rounds;
7. Bracket integrity in power matching supersedes alternate side presentation.

Competition Coordinators in smaller regions (less than eight teams) have the discretion to modify power matching rules to create a fairer competition.

Rule 33. Merit Decisions

Judges **shall not** announce a ruling either based on the legal merits of the trial or based on the ballots and score sheets.

Rule 34. Effect of Bye, Default, or Forfeiture

A bye becomes necessary when an odd number of teams compete in a region and a Bye-Buster team cannot be assembled. The bye in the first round is assigned randomly. In Rounds 2 and 3, the bye is given to the team with the lowest cumulative score at that point in the competition.

For the purposes of advancement and seeding, when a team draws a bye or wins by default in Round 1, that team will be given a win and, temporarily, the average number of ballots and points earned by all Round 1 winners. A team that wins by default or draws a bye in Round 2 will be given a win and, temporarily, the average number of ballots and points earned by all the Round 2 winners. A team that wins by default or draws a bye in Round 3 will be given a win and an average of that team's wins and ballots from Rounds 1 and 2. Once Round 3 is completed, the average ballots initially used by bye teams or default winners will be replaced with the average of their own ballots and points from the 2 rounds in which they competed.

For the purposes of advancement and seeding (not final scoring), a team that forfeits Round 1 will be given a loss and, temporarily, the average number of ballots and points earned by all Round 1 losers. A team that forfeits Round 2 will be given a loss and, temporarily, the average number of ballots and points earned by all Round 2

that team in Rounds 1 and 2. Once Round 3 is completed, the average ballots and points initially used by forfeiting teams will be replaced with an average of their own ballots and points from the 2 rounds in which they competed.

If a Bye-Buster team can be created for a round of competition, the Bye-Buster team will be the opponent of team that qualified for the bye. The Bye-Buster team will be made up of competitors from various teams, who are not performing in that specific round of competition. The Bye-Buster team members must be from teams and schools other than the team that qualified for the bye round (i.e., the opposing team). Bye-Buster team members will be chosen on a voluntary basis, but, if a Bye-Buster team requires members, and not enough volunteers come forward, the Competition Coordinator can task a non-competing student to participate in the Bye-Buster team.

The Bye-Buster Team will not have their score added to their overall team score and will only serve as a live competitor for the team that qualified for the Bye. The team that qualified for the Bye will, per the pre-existing rules, be awarded a win, regardless of trial outcome, but will be awarded the total number of Ballots and Points, based upon the Judges' scores. Meaning, at the end of the round, the team that qualified for the Bye will have a Win, and their total Ballots and Points applied to their overall competition score and rankings.

Dispute Settlement

Rule 35. Reporting Rules Violation – Inside the Bar

At the conclusion of each trial round, the Presiding Judge will ask each side if it would like to bring a Rule 35 challenge. If any team has serious reason to believe that a material rule or ethical violation has occurred, one of its student attorneys shall indicate that the team intends to bring a challenge. The student attorney may communicate with co-counsel and student witnesses before lodging the notice of a challenge or in preparing the Rule 35 Reporting Form contained in these materials. **At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke challenge procedures.** Teams filing frivolous challenges may be penalized.

Rule 36. Dispute Resolution Procedure

At the conclusion of the trial, the Presiding Judge will ask both teams if they have Rule 35 challenges for material rule or ethical violations.

In a virtual competition, any team bringing a challenge will have **3 minutes** to complete the online violation form and place the link in the Zoom chat area. The judge will not provide the link to the blank form. If both teams have challenges, they should complete their forms at the same time.

The Presiding Judge will review the challenge and determine whether or not it merits a hearing. If the challenge is deemed not to merit a hearing, the Presiding Judge will deny the challenge outright.

If the Presiding Judge decides the challenge merits a hearing, the hearing will be held in open court. Each team will **have 2 minutes** to argue the challenge. After arguments, the Presiding Judge will determine whether or not there was a material violation.

The Presiding Judge's decision **will not** be announced.

The timekeepers **MUST** time these proceedings. Time should not be extended or estimated.

In an in-person competition, the Presiding Judge will review the written dispute and determine whether the dispute deserves a hearing or should be denied. If the dispute is denied, the Presiding Judge will record the reasons for denial, announce the decision to the Court, and retire along with the other judges to complete the scoring process.

counsel for their written response. After the team has recorded its response and transmitted it to the Presiding Judge, the Presiding Judge will ask each team to designate a spokesperson. Spokespersons will have 5 minutes maximum to prepare their arguments, after which the Presiding Judge will conduct a hearing, providing each spokesperson three minutes to present their argument. Spokespersons may be questioned by the judge. At no time during the process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the Presiding Judge will adjourn the court and retire to consider a ruling on the dispute. That decision will be recorded on the dispute form with no further announcement.

Rule 37. Effect of Violation on Score

If the Presiding Judge determines that a substantial rules violation or a violation of the Code of Ethical Conduct has occurred, the judge will inform the scorers of the dispute and provide a summary of each team's argument. Two penalty points will also be deducted from the violating teams score and indicated on the Presiding Judge's ballot. The decision of the Presiding Judge is FINAL.

Rule 38. Reporting Rules Violation – Outside the Bar

Charges of ethical violations that involve people other than performing student team members must be made **promptly** to a Competition Coordinator, who will ask the complaining party to complete the Rule 38 Reporting Form. The form will be submitted to the Competition Coordinator who will rule on any actions to be taken regarding the charge, including notification of the judging panel. Violations occurring during a trial involving competing students should be handled according to Rule 35.

In-Person Mock Trial Rules of Procedure Before the Trial

Rule 39. Team Roster

Copies of the Team Roster shall be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams must be identified by their letter code only; no information identifying team origin should appear on the form. Before beginning a trial, teams shall exchange copies of the Team Roster. Witness lists should identify the preferred gender pronouns of each witness for the benefit of the judges and the opposing team.

Rule 40. Courtroom Setting

The Plaintiff/Prosecution team shall be seated closest to the jury box. No team shall rearrange the courtroom without permission of the judge.

Beginning of the Trial

Rule 41. Jury Trial

The case will be tried to a jury; arguments are to be made to the Presiding Judge and jury. Teams may address the judges seated in the jury box as the jury.

Rule 42. Motions Prohibited

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

Rule 43. Standing During Trial

Unless excused by the Presiding Judge, attorneys will stand while giving opening statements and closing arguments, direct and cross-examinations, and for all objections.

Rule 44. Objections During Opening & Closing Statements

Presenting Evidence

Rule 45. Procedure for Introducing Exhibits

The following steps effectively introduce evidence:

Introduce the Item for Identification

1. Hand a copy of the exhibit to opposing counsel while asking permission to approach the bench. “I am handing the Clerk what has been marked as Exhibit _____. I have provided a copy to opposing counsel. I request permission to show Exhibit _____ to witness _____.”
2. Show the exhibit to the witness. “Can you please identify Exhibit _____ for the Court?”
3. The witness identifies the exhibit.

Offer the Item into Evidence

1. Offer the exhibit into evidence. “Your Honor, we offer Exhibit _____ into evidence at this time. The authenticity of the exhibit has been stipulated.”
2. Court: “Is there an objection?” If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.
3. Opposing counsel: “No, Your Honor,” or “Yes, Your Honor.” If yes, the objection will be stated on the record. Court: “Is there any response to the objection?”
4. Court: “Exhibit _____ is/is not admitted.”

The attorney may then proceed to ask questions. If admitted, Exhibit _____ becomes a part of the Court’s official record and, therefore, is handed over to the Clerk. The exhibit should not be left with the witness or taken back to counsel table.

Attorneys do not present admitted evidence to the jury because they have exhibits in their case materials; thus, there is no publishing to the jury.

Rule 46. Use of Notes; No Electronic Devices

Attorneys may use notes when presenting their cases. Witnesses, however, are not permitted to use notes while testifying. Attorneys may consult with one another at counsel table verbally or through the use of notes. The use of laptops or other electronic devices is prohibited.

Federal Rules of Evidence – Mock Trial Version

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

For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence. **The numbering of some rules does not match the Federal Rules of Evidence and some rule numbers or sections are skipped because those rules were not deemed applicable to mock trial procedure.**

prepared to point out specific rules (quoting, if necessary) and to argue persuasively for the interpretation and application of the rule they think is appropriate.

Article I. General Provisions

Rule 101. Scope

The ‘Mock Trial Rules of Competition’ and these ‘Federal Rules of Evidence – Mock Trial Version’ govern the Oregon High School Mock Trial Competition.

Rule 102. Purpose and Construction

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

Article II. Judicial Notice

Rule 201. Judicial Notice of Adjudicative Facts

1. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.
2. The court may judicially notice a fact that is not subject to reasonable dispute because it is a matter of mathematical or scientific certainty. For example, the court could take judicial notice that $10 \times 10 = 100$ or that there are 5,280 feet in a mile.
3. The court must take judicial notice if a party requests it and the court is supplied with the necessary information.
4. The court may take judicial notice at any stage of the proceeding.
5. A party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed.
6. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

Article IV. Relevancy and Its Limits

Rule 401. Definition of “Relevant Evidence”

Evidence is relevant if:

1. it has any tendency to make a fact more or less probable than it would be without the evidence; and
2. the fact is of consequence in determining the action.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

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

Example: Questions and answers must relate to an issue in the case. The following is likely inadmissible in a traffic accident case: “Mrs. Smith, how many times have you been married?”

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

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

Rule 404. Character Evidence; Crimes or Other Acts

Character Evidence

1. Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.
2. Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case:
 - a. a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecution may offer evidence to rebut it;
 - b. a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted the prosecution may:
 - i. offer evidence to rebut it; and
 - ii. offer evidence of the defendant's same trait; and
 - c. in a homicide case, the prosecution may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.
3. Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

Crimes, Wrongs, or Other Acts

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

Rule 405. Methods of Proving Character

1. By Reputation or Opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.
2. By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

Rule 406. Habit, Routine Practice

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

Rule 407. Subsequent Remedial Measures

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

1. negligence;
2. culpable conduct;
3. a defect in a product or its design;
4. a need for a warning of instruction.

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

Rule 408. Compromise Offers and Negotiations

disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or contradiction:

- a. furnishing, promising, or offering – or accepting, promising to accept, or offering to accept – a valuable consideration in compromising or attempting to compromise the claim; and
 - b. conduct or a statement made during compromise negotiations about the claim – except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.
2. Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Offers to Pay Medical and Similar Expenses

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

Rule 410. Pleas, Plea Discussions, and Related Statements

1. Prohibited Uses. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:
 - a. a guilty plea that was later withdrawn;
 - b. a nolo contendere plea;
 - c. a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
 - d. a statement made during plea discussion with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.
2. Exceptions. The court may admit a statement described in Rule 410 1.c. or d.:
 - a. in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or
 - b. in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

Rule 411. Liability Insurance (civil cases only)

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

Article V. Privileges

Rule 501. General Rule

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

1. communications between husband and wife;
2. communications between attorney and client;
3. communications among grand jurors;
4. secrets of state; and
5. communications between psychiatrist and patient.

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703. See Rule 3.

Example: Witness knows that Harry tends to drink a lot at parties and often gets drunk. Witness was not at the party and did not see Harry drink.

Attorney 1: "Do you think Harry was drunk at the party?"

Witness: "Harry gets drunk all the time, so yes he was probably drunk."

Attorney 2: "Objection, Your Honor. Lack of personal knowledge. Witness was not at the party and can't know if Harry was drunk or not."

Judge: "Sustained. The jury will disregard the witness's answer."

Rule 607. Who May Impeach

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

MVP Tip: An effective cross-examiner tries to show the jury that a witness should not be believed. This is best accomplished through a process called impeachment which may use one of the following tactics: (1) showing that the witness has contradicted a prior statement, particularly one made by the witness in an affidavit (see example below); (2) asking questions about prior conduct of the witness that makes the witness's truthfulness doubtful (see Rule 608); or (3) asking about evidence of certain types of criminal convictions (see Rule 609).

In order to impeach the witness by comparing information in the witness's affidavit to the witness's testimony, attorneys should use this procedure:

1. Introduce the witness's affidavit for identification (See Rule 39);
2. Repeat the statement the witness made on direct or cross-examination that contradicts the affidavit.

Attorney: "Now, Mrs. Burns, on direct examination you testified that you were out of town on the night in question, didn't you?"

Mrs. Burns: "Yes."

3. Ask the witness to read the portion of the affidavit that contradicts the testimony.

Attorney: "Mrs. Burns, will you read Line 18 of your affidavit?"

Witness: Reading from affidavit, "Harry and I decided to stay in town and go to the theater."

4. Dramatize the conflict in the statements. Remember the point of this line of questioning is to show the contradiction, not to determine whether Mrs. Burns was in town.

Attorney: So, Mrs. Burns, you testified you were out of town the night in question, didn't you?"

Witness: "Yes."

Attorney: "Yet, in your affidavit, you said you were in town, did you not?"

Witness: "Yes."

1. Reputation or Opinion Evidence. A witness's credibility may be attacked or supported by testimony about the witness's reputation for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.
2. Specific Instances of Conduct. Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:
 - a. the witness; or
 - b. another witness whose character the witness being cross-examined has testified about.

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

Example:

Attorney 1 (on cross-examination): "Isn't it true that you once lost a job because you falsified expense reports?"

Witness: "Yes, but..."

Attorney 1: "Thank you."

Attorney 2 (on redirect): "Did you do anything to mitigate the falsified reports?"

Witness: "Yes, I paid back all of the money and entered a program for rehabilitation."

Attorney 2: "And how long ago was this?"

Witness: "25 years."

Attorney 2: "And have you successfully held jobs since then that required you to be truthful and to be trusted by your employer?"

Witness: "Yes."

Rule 609. Impeachment by Evidence of Conviction of Crime

1. In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:
 - a. for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
 - i. must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and
 - ii. must be admitted in a criminal case in which the witness is a defendant if the probative value of the evidence outweighs its prejudicial effect to that defendant; and
 - b. for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving – or the witness's admitting – a dishonest act or false statement.
2. Limit on Using the Evidence After 10 Years. This subdivision 2. applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the

substantially outweighs its prejudicial effect.

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

Rule 610. Religious Beliefs or Opinions

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

Rule 611. Mode and Order of Interrogation and Presentation

1. Control by Court; Purposes. The Court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
 - a. make those procedures effecting for determining the truth;
 - b. avoid wasting time; and
 - c. protect witnesses from harassment or undue embarrassment.
2. 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' 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.

MVP Tip: Cross-examination follows the opposing attorney's direct examination of a witness. Attorneys conduct cross-examination to explore weaknesses in the opponent's case, test the witness's credibility, and establish some of the facts of the cross-examiner's case whenever possible. Cross-examination should:

- call for answers based on information given in witness statements or the fact pattern;
- use leading questions which are designed to get "yes" or "no" answers (see examples below);
- never give the witness a chance to unpleasantly surprise the attorney;
- include questions that show the witness is prejudiced or biased or has a personal interest in the outcome of the case;
- include questions that show an expert witness or even a lay witness who has testified to an opinion is not competent or qualified due to lack of training or experience.

Remember to stay relaxed and be ready to adapt your prepared cross questions to the actual testimony given on direct examination; always listen to the witness's answer; avoid giving the witness an opportunity to reemphasize the points made against your case on direct; don't harass or attempt to intimidate the witness; and do not quarrel with the witness. **Be brief and ask only questions to which you already know the answer.**

3. Leading questions. Leading questions should not be used on direct examination except as necessary to advance the witness's testimony. Ordinarily, the court should allow leading questions:
 - a. on cross-examination; and
 - b. when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

Example:

Attorney 1 (on cross-examination): "So, Mr. Smith, you took Ms. Jones to a movie that night, didn't you?"

4. Redirect/Recross. After cross-examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross-examination. Likewise, additional questions may be asked by the cross-examining attorney on recross, but such questions must be limited to matters raised on redirect examination and should avoid repetition. For both redirect and recross, attorneys are limited to two questions each.

MVP Tip: Following cross-examination, the counsel who called the witness may conduct redirect examination. Attorneys redirect to clarify new or unexpected issues or facts brought out in the immediately preceding cross-examination only; they may not bring up new issues. Attorneys may or may not want to redirect. If an attorney asks questions beyond the issues raised on cross, they may be objected to as “outside the scope of cross-examination.” It is sometimes more beneficial not to conduct it for a particular witness. Attorneys should pay close attention to what is said during cross-examination to determine whether it is necessary to conduct redirect.

If the credibility or reputation for truthfulness of the witness is attacked on cross-examination, the direct examining attorney may wish to “save” the witness on redirect. If so, the questions should be limited to the damage the attorney thinks was done and should enhance the witness’s truth-telling image in the eyes of the court. Work closely with your coaches on redirect and recross strategies. Remember that time will be running during both redirect and recross and may take away from the time you need for questioning other witnesses.

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

Rule 612. Writing Used to Refresh a Witness’ Memory

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

Rule 613. Witness’s Prior Statement

1. Showing or Disclosing the Statement During Examination. When examining a witness about the witness’s prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party’s attorney.
2. Extrinsic Evidence of a Prior Inconsistent Statement. Extrinsic evidence of a witness’s prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision 2. does not apply to an opposing party’s statement under Rule 801 4.b.

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

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

1. rationally based on the witness’s perception;
2. helpful to clearly understand the witness’s testimony or to determining a fact in issue; and
3. not based on scientific, technical, or other specialized knowledge with the scope of Rule 702.

Example:

Inadmissible Lay opinion testimony: “The doctor put my cast on incorrectly. That’s why I have a limp now.”

Admissible Lay Opinion Testimony: “He seemed to be driving pretty fast for a residential street.”

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise. See Rule 40.

Rule 703. Bases of Opinion Testimony by Experts

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

MVP Tip: Unlike lay witnesses who must base their opinions on what they actually see and hear, expert witnesses can base their opinions on what they have read in articles, texts, records they were asked to review by a lawyer, or other documents which may not actually be admitted into evidence at the trial. These records or documents *may* include statements made by other witnesses.

Rule 704. Opinion of Ultimate Issue

1. In General – Not Automatically Objectionable. An opinion is not objectionable just because it embraces an ultimate issue.
2. Exception. In a criminal case, an expert must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

Article VIII. Hearsay

The following scenario will be used in all of the hearsay or hearsay exception examples below:

Mary is on trial for manslaughter. She allegedly drove after drinking, jumped a curb, and hit a pedestrian on the sidewalk. The pedestrian later died from his extensive injuries. Mary claims at trial that she was not driving – her boyfriend, Nate, was – and he swerved to miss a dog in the street. Several bystanders saw the accident and told the police that Mary was driving.

Rule 801. Definitions

The following definitions apply under this article:

1. Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct if the person intended it as an assertion.
2. Declarant. "Declarant" means the person who made the statement.
3. Hearsay. "Hearsay" means a statement that:
 - a. the declarant does not make while testifying at the current trial or hearing; and
 - b. a party offers in evidence to prove the truth to the matter asserted.
4. Statements that are not Hearsay. A statement that meets the following conditions is not hearsay:

about a prior statement, and the statement:

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

Example: Prior to Mary's criminal trial, the victim's family sued Mary for wrongful death and won. Nate was a witness in the civil trial and has now been called as a witness in Mary's criminal trial.

Prosecutor: "Nate, you say you were driving the vehicle before it hit the curb, correct?"

Nate: "Yes."

Prosecutor: "And you swerved and hit the curb because...?"

Nate: "I swerved to miss a dog."

Prosecutor (after properly introducing civil trial transcript for identification): "Nate, will you read Line 18 of this page?"

Nate: "Witness (Nate): 'I swerved to miss a giant pothole.'"

Mary's Attorney: "Objection! That statement is hearsay."

Prosecutor: "Your Honor, this is a prior statement made by the witness and is not hearsay."

Judge: "Objection is overruled. Witness's prior statement under oath is not hearsay and is admissible."

- b. An Opposing Party's Statement. The statement is offered against an opposing party and:
 - i. was made by the party in an individual or a representative capacity;
 - ii. is one the party manifested that it adopted or believed to be true;
 - iii. was made by a person whom the party authorized to make a statement on the subject;
 - iv. was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
 - v. was made by the party's coconspirator during and in furtherance of the conspiracy.
 - vi. The statement must be considered but does not by itself establish the declarant's authority under iii.; the existence or scope of the relationship under iv.; or the existence of the conspiracy or participation in it under v.

Example: Prosecutor is cross-examining Susan, Mary's friend.

Prosecutor: "Mary actually called you after the accident, didn't she?"

Susan: "Yes."

Prosecutor: "And Mary told you all about the accident didn't she?"

Susan: "She talked about the accident, yes."

Prosecutor: "And Mary told you during that call that she'd driven her car into a person, right?"

Mary's Attorney: "Objection! Mary's statement to Susan is hearsay."

Prosecutor: "Your Honor, Mary's statement is an Opposing Party's statement."

Judge: "Objection overruled. Mary's statement is not hearsay and is admissible."

Prosecutor: "So, Mary told you she'd driven her car into a person, right?"

Susan: "Mary said, 'I can't believe I drove my car into a person.'"

Rule 802. Hearsay Rule

Hearsay is not admissible, except as provided by these rules.

Rule 803. Exceptions to the Rule Against Hearsay – Regardless of Availability

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

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

Example: Mary's attorney calls a bystander who was at the scene of the accident to testify.

Mary's Attorney: "Were you present when the accident occurred?"

Bystander: "Yes, I was across the street."

Mary's Attorney: "And what do you remember about the accident?"

Bystander: "I was across the street looking for an address. I had my back turned to the street and I heard an engine revving. Then, someone behind me said, 'That car is going really fast.'"

Prosecutor: "Objection! That statement is hearsay."

Mary's Attorney: "Your Honor, the statement is a present sense impression and is excepted from the hearsay rule."

Judge: "Objection overruled."

Mary's Attorney: "So you heard someone behind you say..."

Bystander: "That car is going really fast."

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

Example: Mary's attorney continues to question the bystander.

Mary's Attorney: "So, then what happened?"

Bystander: "I started to turn toward the street and as I turned I heard a woman yell, 'Oh my God, that man's car is out of control!'"

Prosecutor: "Objection, Your Honor. Hearsay."

Mary's Attorney: "Your Honor, the woman's statement is an excited utterance. She made the statement while watching the car drive out of control and it is related to the event."

Judge: "Overruled. The statement is admissible."

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

Example: Mary's attorney continues to question the bystander.

Mary's Attorney: "Then what did you see?"

Bystander: "By the time I turned around, both people were out of the car. The man from the car staggered into a woman and she said, 'Oh my God, he reeks of alcohol!'"

Prosecutor: "Objection! Hearsay!"

Mary's Attorney: "Your Honor, the declarant's statement was a sensory condition. She smelled alcohol when my client's boyfriend fell into her and said so."

Judge: "The objection is overruled."

4. Statement Made for Medical Diagnosis or Treatment. Statements made for the purpose of medical diagnosis or treatment.
5. Recorded Recollection. A record that:
 - a. is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;
 - b. was made or adopted by the witness when the matter was fresh in the witness's memory; and
 - c. accurately reflects the witness's knowledge.

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

6. Records of Regularly Conducted Activity. A record of an act, event, condition, opinion, or diagnosis if:
 - a. the record was made at or near the time by – or from information transmitted by – someone with knowledge;
 - b. the record was kept in the course of regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
 - c. making the record was a regular practice of the activity;
 - d. all these conditions are shown by the testimony of the custodian or another qualified witness; and
 - e. the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.
7. Absence of Regularly Conducted Activity. Evidence that a matter is not included in a record described in Rule 803.6. if:
 - a. the evidence is admitted to prove that the matter did not occur or exist;
 - b. a record was regularly kept for a matter of that kind; and
 - c. the opponent does not show that the possible source of information or other circumstances indicate a lack of trustworthiness.
8. Public Records. A record or statement of a public office if:
 - a. it sets out:
 - i. the office's activities;
 - ii. a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law enforcement personnel; or
 - iii. in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and
 - b. the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.
9. Absence of a Public Record. Testimony that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:
 - a. the record or statement does not exist; or

that kind.

10. Statements in Ancient Documents. A statement in a document that is at least 20 years old and whose authenticity is established.
11. Statements in Learned Treatises, Periodicals, or Pamphlets. A statement contained in a treatise, periodical, or pamphlet if:
 - a. the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
 - b. the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.
12. Reputation Concerning Character. A reputation among a person's associates or in the community concerning a person's character.
13. Judgment of a Previous Conviction. Evidence of a final judgment of conviction if:
 - a. the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;
 - b. the conviction was for a crime punishable by death or by imprisonment for more than one year;
 - c. the evidence is admitted to prove any fact essential to the judgment; and
 - d. when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

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

Rule 804. Hearsay Exceptions; Declarant Unavailable

1. Criteria for Being Unavailable. A declarant is unavailable as a witness if the declarant:
 - a. is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
 - b. refuses to testify about the subject matter despite a court order to do so;
 - c. testifies to not remembering the subject matter;
 - d. cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
 - e. is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:
 - i. the declarant's attendance, in the case of a hearsay exception under Rule 804.b.1 or 804.b.6; or
 - ii. the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804.b.2, 804.b.3, or 804.b.4.

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

2. The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:
 - a. Former Testimony. Testimony that:
 - i. was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and
 - ii. is now offered against a party who had – or in a civil case, whose predecessor in interest had – an opportunity and similar motive to develop it by direct, cross-, or redirect examination.
 - b. Statement Under the Belief of Imminent Death. In a prosecution for a homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.
 - c. State Against Interest. A statement that:
 - i. a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or

- someone else or to expose the declarant to civil or criminal liability; and
 - ii. is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.
- d. Statement of Personal or Family History
- i. the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or
 - ii. another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.
- e. Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability. A statement offered against a party that wrongfully caused – or acquiesced in wrongfully causing – the declarant's unavailability as a witness and did so intending that result.

Rule 805. Hearsay Within Hearsay

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