

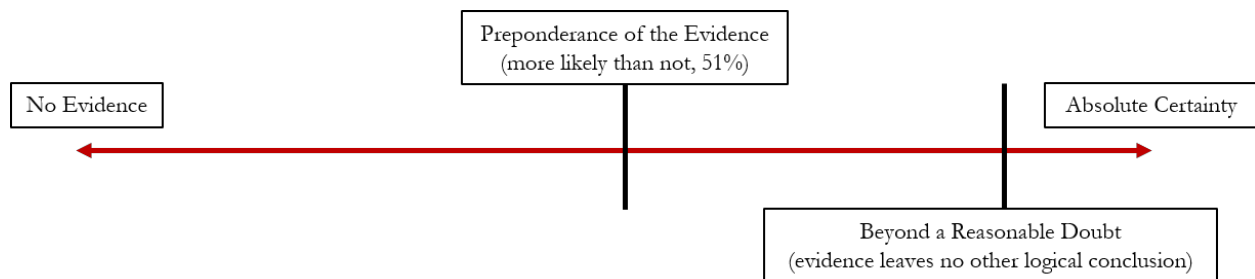
# The Form and Substance of a Trial

## The Elements of a Civil Case

In a civil lawsuit, when a person allegedly commits a wrong against another (other than a breach of contract), it is called a “tort”; a “tort” is a civil wrong committed by one person against another. The injured party (the plaintiff) may sue the wrongdoer (the defendant) in court for a remedy which is usually money damages.

## Preponderance of the Evidence

The plaintiff must prove the plaintiff’s claims by what the law refers to as a “preponderance of the evidence.” That means that the plaintiff must persuade you by evidence that makes you believe that the plaintiff’s claims are more likely true than not true. After weighing all of the evidence, if you cannot decide that something is more likely true than not true, you must conclude that the plaintiff did not prove it. You should consider all of the evidence in making that determination, no matter who produced it.



## General Role Descriptions

### Attorneys

Trial attorneys present evidence to support their side of the case. They introduce physical evidence and elicit witness testimony to bring out the facts surrounding the allegations.

The Plaintiff’s attorneys present the case for the Plaintiff, Honeycutt Carnival. By questioning witnesses, they will try to convince the jury that the Defendant, Sammy Snow, is liable by a preponderance of the evidence.

The Defense attorneys will present the case of the defendant, Sammy Snow. They will offer their own witnesses and evidence to show their client’s version of the facts. They may undermine the Plaintiff’s case by showing that the Plaintiff’s witnesses cannot be depended upon, that their witness testimony makes no sense or is inconsistent, or by presenting physical evidence that contradicts that brought by the Plaintiff.

Demeanor of all attorneys is very important. On direct examination it is easy to be sympathetic and supportive of your witnesses. On cross-examination it is no less important to be sympathetic and winning. An effective cross-examination is one in which the cross examiner, the witness, the judge and jury all agree on the outcome. It is bad manners and unethical to be sarcastic, snide, hostile or contemptuous. The element of surprise may, in fact, be a valuable attorney’s tool, but it is best achieved by being friendly and winning in the courtroom, including with the other side.

Attorneys on both sides will:

- conduct direct examination and redirect if necessary;
- conduct cross examination conduct redirect and re-cross if necessary;
- make appropriate objections (note: only the direct and cross-examining attorneys for a particular witness may make objections during that testimony);

- be prepared to act as a substitute for other attorneys; and
- make opening statement and closing arguments.

## Opening Statement

The opening statement outlines the case it is intended to present. The attorney for Prosecution delivers the first opening statement and the defense follows with the second. A good opening statement should explain what the attorney plans to prove, how it will be proven; mention the burden of proof and applicable law; and present the events (facts) of the case in an orderly, easy to understand manner.

One way to begin your statement could be as follows:

“Your Honor, my name is (full name), representing the prosecution/defendant in this case.”

Proper phrasing in an opening statement includes:

- “The evidence will indicate that ...”
- “The facts will show that ...”
- “Witnesses (full names) will be called to tell ...”
- “The defendant will testify that ...”

**Tip: You should appear confident, make eye contact with the judges, and use the future tense in describing what your side will present. Do not read your notes word for word – use your notes sparingly and only for reference.**

## Direct Examination

Attorneys conduct direct examination of their own witnesses to bring out the facts of the case. Direct examination should:

- call for answers based on information provided in the case materials;
- reveal all of the facts favorable to your position;
- ask questions which allow the witness to tell the story. Do not ask leading questions which call for only “yes” or “no” answers – leading questions are only appropriate during cross-examination;
- make the witness seem believable;
- keep the witness from rambling.

Call for the witness with a formal request:

“Your Honor, I would like to call (full name of witness) to the stand.”

The clerk will swear in the witness before you ask your first question.

It is good practice to ask some introductory questions of the witness to help them feel comfortable. Appropriate introductory questions might include asking the witness’ name, residence, present employment, etc.

Proper phrasing of questions on direct examination include:

- “Could you please tell the court what occurred on (date)?”
- “How long did you remain in that spot?”
- “Did anyone do anything while you waited?”

Conclude your direct examination with:

“Thank you Ms./Mrs./Mr. \_\_\_\_\_. That will be all, your Honor.”

**Tips:** Isolate exactly what information each witness can contribute to proving your case and prepare a series of clear and simple questions designed to obtain that information. Be sure all items you need to prove your case will be presented through your witnesses. Never ask questions to which you do not know the answer. Listen to the answers. If you need a moment to think, it is appropriate to ask the judge for a moment to collect your thoughts, or to discuss a point with co-counsel.

## Cross Examination, Redirect, Re-Cross, and Closing

For cross examination, see explanations, examples, and tips for *Rule 611*.

For redirect and re-cross, see explanation and note to *Rule 25* and *Rule 611*.

For closing, see explanation to *Rule 26*.

## Witnesses

Witnesses supply the facts in the case. As a witness, the official source of your testimony, or record, is your witness statement, all stipulations, and exhibits you would reasonably have knowledge of. The witness statements contained in the packet should be viewed as signed and sworn affidavits.

You may testify to facts stated in or reasonably inferred from your record. If an attorney asks you a question, and there is no answer to it in your official statement, you can choose how to answer it. You may reply, “I don’t know” or “I can’t remember,” or you can infer an answer from the facts you do officially know. Inferences are only allowed if they are reasonable. If your inference contradicts your official statement, you can be impeached. Also see *Rule 3*.

It is the responsibility of the attorneys to make the appropriate objections when witnesses are asked to testify about something that is not generally known or cannot be inferred from the witness statement.

## In-Person Competition Roles

### Court Clerk and Bailiff – Best Practices

It is recommended that a team provide two separate team members for these roles. If a team only provides one person for both roles, then that person must be prepared to perform as clerk or bailiff in every trial. The court clerk and bailiff aid the judge during the trial. For the purpose of the competition, the duties described below are assigned to the roles of clerk and bailiff.

The **Plaintiff** is expected to provide the **clerk**. The **Defense** provides the **bailiff**.

When evaluating the team performance, the Presiding Judge will consider contributions by the clerk and bailiff.

### Duties of the Clerk – Provided by the Plaintiff

When the judge arrives in the courtroom, the clerk should introduce themselves and explain that they will assist as the court clerk. The clerk’s duties are as follows:

- **Roster and rules of competition:** The clerk is responsible for bringing a roster of students and their roles to each trial round. The clerk should have enough copies to be able to give a roster to each judge in every round, one for the opposing team, and some extras (5-6 copies per round). The roster form contained in this packet should be used. In addition, the clerk is responsible for bringing a copy of the “Rules of

Competition” to each round. In the event that questions arise and the judge needs clarification, the clerk shall provide this copy to the judge.

- **Swear in the Witnesses:** The clerk should swear in each witness as follows:
  - “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?”  
Witness responds, “I do.”  
Clerk then says, “Please be seated, state your name for the court, and spell your last name.”
- **Provide Exhibits:** The clerk should provide copies of the exhibits for attorneys or judges if requested (both sides should have their own copies of the exhibits, however, a well-prepared clerk has spare copies).
- **Extra Duties:** A clerk may also be asked to perform other duties to assist the judges or Competition Coordinator. A clerk should be prepared to assist in whatever way possible to help the competition run smoothly.

A proficient clerk is critical to the success of a trial and points will be given on the clerk’s performance.

## **Duties of the Bailiff – Provided by the Defense**

When the judge arrives in the courtroom, the bailiff should introduce themselves and explain that they will assist as the court bailiff. The bailiff’s duties are to call the court to order and to keep time during the trial.

- **Call to Order:** As the judges enter the courtroom, the bailiff says, “All rise. The Court with the Honorable Judge \_\_\_\_\_ presiding, is now in session. Please be seated and come to order.” Whenever the judges leave or enter the courtroom, you should ask the audience to rise.
- **Timekeeping:** The bailiff is responsible for bringing a stopwatch to the trial. The stopwatch cannot be a cell phone; no electronic devices are permitted. A bailiff should practice with the stopwatch and know how it works before the competition. Time limits are provided for each segment of the trial. The bailiff should keep track of time used and time remaining for each segment of the trial using the timesheet provided in this packet.

**Time should stop when attorneys make objections and restart after the judge has ruled on the objection and the next question is asked by the attorney. The time should also stop if the judge questions a witness or attorney.**

After each witness has finished testifying, the bailiff should announce the time remaining in the segment. For instance, if after direct examination of two witnesses, the Prosecution has used 12 minutes announce, "Eight minutes remaining." (20 minutes total allowed for direct/redirect, less the 12 minutes already used). After each witness has completed his/her testimony, the bailiff marks the timesheet the time to the nearest 10 seconds. When three minutes remain, the bailiff holds up the "3 minutes" card, followed by the "1 minute" and "0" cards. When time has run out for a segment, the bailiff announces, "Time." The bailiff should make certain the timecards are visible to all judges and attorneys when they are held up.

Timesheets for each round will be provided at the competition. The bailiff is responsible for bringing the sheets to each round. Each team will also be provided with timecards.

A proficient bailiff who times both teams in a fair manner is critical to the success of a trial.

## **Team Manager (optional)**

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 clerk or bailiff. This position is not required for the competition.

## **Unofficial Timekeeper (optional)**

Teams may provide an unofficial timekeeper during the trial rounds. The unofficial timekeeper can be a clerk or a currently performing attorney from the Prosecution's side. This unofficial timekeeper must be identified before the trial begins and may check the time with the bailiff twice during the trial (once during the Prosecution's case-in-chief and once during the presentation of the Defense's case). When possible, the unofficial timekeeper should sit next to the official timekeeper.

Any objections to the bailiff's official time must be made by the unofficial timekeeper during the trial before the judges score the round. The Presiding Judge shall determine if there has been a rule violation and whether to accept the bailiff's time or make a time adjustment. Only current-performing team members in the above-stated roles may serve as unofficial timekeepers.

To conduct a time check, the unofficial timekeeper should request one from the Presiding Judge and ask the bailiff how much time was recorded in every completed category for both teams. The unofficial timekeeper should then compare times with the bailiff. If the times differ significantly, the unofficial timekeeper should notify the judge and ask for a ruling as to the time remaining. If the judge approves the request, the unofficial timekeeper should consult with attorneys and determine if time should be added or subtracted in any category. If the judge does not allow a consultation, the unofficial timekeeper may request an adjustment. The following sample questions and statements may be used.

“Your Honor, before calling the next witness, may I compare time records with the bailiff?”

“Your Honor, there is a discrepancy between my records and those of the bailiff. May I consult with the attorneys on my team before requesting a ruling from the court?”

"Your Honor, we respectfully request that \_\_\_ minutes/seconds be subtracted from the Prosecution's direct/cross-examination."

"Your Honor, we respectfully request that \_\_\_ minutes/seconds be added to the Defense direct/cross-examination."

The trial should not be interrupted for minor time differences. A team should determine in advance a minimum time discrepancy to justify interrupting the trial. The unofficial timekeeper should be prepared to show records and defend requests. Frivolous complaints will be considered by judges when scoring for the round. Likewise, valid complaints will be considered against the violating team.

Time shall be stopped during a timekeeping request.

## **Virtual Competition Logistics & Special Roles**

### **Swearing in of the Witnesses**

In virtual competitions, all witnesses will be sworn in by the Presiding Judge as a preliminary matter. The Presiding Judge will use 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?”

All witnesses respond, “I do.”

Subsequently, the attorneys for each side will ask each witness to “state your name for the court and spell your last name” as the first question when the witness begins their testimony.

## **Timekeepers (Virtual)**

**Both teams** will provide a timekeeper to keep time throughout the trial. Timekeepers are responsible for providing their own timekeeping devices. Time limits are provided for each segment of the trial. The timekeeper should keep track of time used and time remaining for each segment of the trial using the timesheet provided at the end of this packet.

**Time should stop when attorneys make objections and restart after the judge has ruled on the objection and the next question is asked by the attorney. The time should also stop if the judge questions a witness or attorney.**

Times should be announced by both timekeepers in the chat area of the Zoom courtroom. After each witness has finished testifying, the timekeepers should announce the time remaining in the segment. For instance, if after direct examination of two witnesses, a team has used 12 minutes, the timekeepers should type “8:00 remaining” in the chat area. (20 minutes total allowed for direct/redirect, less the 12 minutes already used). After each witness completes their testimony, the timekeepers mark their timesheets with the time to the nearest 10 seconds. The timekeepers will announce a 3 minute, 1 minute, and TIME warning in the chat area of the Zoom courtroom. If the TIME announcement goes unnoticed, the timekeepers should unmute and announce TIME aloud.

Timekeepers are responsible for keeping time and providing time information if requested by performing students. Time should be stopped during a timekeeping request. Major discrepancies between the timekeepers should be settled by the Presiding Judge. The Presiding Judge will choose how to adjust the time in order to remedy the discrepancy. Minor time differences should not be brought to the Presiding Judge. Frivolous complaints 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?”

A witness is not bound by facts contained in other witness statements.

**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 Rules of Competition and program policies and practices, where appropriate. Civics Learning Project will consider 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 (or divisional) level. Teams will be assigned to one of five regions when registration is complete, and, if needed, a separate division. If a region assignment causes substantial hardship to a team, the Competition Coordinator may change the assignment to address the hardship.

**Regional competitions will be held either during the month of February or March, 2025.** 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 15th – 16th, 2025.**



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.

Additional students may be used in support roles as researchers, understudies, photographers, court reporters, and 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 Plaintiff delivers its Opening Statement and Closing Argument first. The Plaintiff 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**

The Presiding Judge has sole discretion to grant time extensions, though they should be rare. If time has expired 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, and volunteer judges approve.

## Before the Trial

### Rule 19. Stipulations

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

### Rule 20. The Record

No stipulations, pleadings, or jury instructions shall be read into 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:

1. Ask the expert to describe factors such as education, professional training, work experience, special skills, or 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**

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

**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

An updated rule on how teams will be ranked, including ranking criteria can be found in Section T5 of the 2024-2025 Mock Trial Tabulation Rules Handbook. ([handbook link](#))

## Rule 32. Pairing (aka Power Matching)

In conjunction with the adoption of the Empire PROcess online Mock Trial platform, the process in which teams will be matched during a competition has changed from previous years' competitions. An updated description on how teams will be paired can be found in Section T4 of the 2024-2025 Mock Trial Tabulation Rules Handbook. ([handbook link](#))

## 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 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 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 an average of that team's ballots and points from Rounds 1 and 2. Once Round 3 is completed, the average ballots initially used by bye teams 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 temporarily, the average number of ballots and points earned by all Round 1 losers. A team that forfeits Round 2 will be given temporarily, the average number of ballots and points earned by all Round 2 losers. A team that forfeits Round 3 will be given the average number of ballots and points earned by that team in Rounds 1 and 2. Once Round 3 is completed, the temporary ballots and points initially used by forfeiting teams will be replaced with zeros for the forfeited round.

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.

If the Presiding Judge determines the grounds for the dispute merit a hearing, the form will be shown to opposing 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

Each team shall submit its roster electronically through the Online Registration Portal. A team's primary coach shall verify their team's roster before submitting it electronically. A team's primary coach may continue to make updates to the roster after its initial submission. A team's primary coach must verify their team's roster at their team check-in, which takes place at the competition. This shall constitute a final submission of a team's roster.

Additionally, 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**

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

## **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. Prior to the beginning of a trial, the use of laptops and other electronic devices is allowed in the courtroom, as long as it is for the sole purpose of completing Pre-Trial Activities associated with the Mock Trial Online Portal. The use of laptops or other electronic devices during the trial is prohibited, with the only exception being if a team is seeking assistance from a Competition Coordinator or their staff via the appropriate Slack Channel.

## **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.**

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