

# **2023-2024 Michigan High School Mock Trial Tournament Rules and Procedures**

**Includes  
In Person and Virtual Procedures**



Michigan High School Mock Trial Series  
Plus  
Courtroom Artistry & Courtroom Journalism

## Notes and Acknowledgements

This document provides the **general rules** and procedures for Michigan Mock Trial for the 2023-24 season. Included here are both in person and virtual procedures, at least one regional weekend will be offered virtually. As we continue to work with the courthouses, we will update the schedules and event specific materials on [www.miciviced.org](http://www.miciviced.org), find the Mock Trial tab under Programs across the top. As the specifics of each case may warrant additional rules, procedures, and notes, please look for year specific case information in the Case Materials.

MCCE would like to extend a special thank you to the Mock Trial Rules and Case Writing committee including: Regan Gibson, Peter Battey, Fatima Bolyea, Honorable Kamish Gant, Jenn Hatter and Kristina Bilows. Thank you for your dedication to the students of Mock Trial. We would also like to extend appreciation to the MCCE Advisory Committee and Board of Directors for their enduring support to civic and law-related education.

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As always, reach out to MCCE if we can be of assistance to enhance your experience. Thank you to each and every student, teacher, coach, and community member for your involvement and dedication to the best of law-related education.

Dear Mock Trial Community Member,

Thank you for your investment in one of the best activities to advance law-related education. We warmly welcome all the students, teachers, attorneys, educators, judges, law students, legal assistants, coaches and more who will participate in the Michigan High School Mock Trial Tournament. We are pleased to continue the Courtroom Artistry and Journalism companion programs in addition to the Mock Trial Tournaments. We hope that you will find your involvement to be intellectually stimulating and personally rewarding. The overarching goals of Mock Trial include:

- ❖ Furthering understanding of the law, court procedures, and the legal system.
- ❖ Increasing proficiency in essential life skills such as listening, dialogue, collaboration, persuasion, speaking, reading, and reasoning.
- ❖ Promoting communication and cooperation between the school community—teachers and students—and the legal profession.
- ❖ Create pathways for K-12 students to see themselves as part of their legal communities and bring their talents to the field. Whether as an attorney, witness, expert, artist, journalist, or future teacher and coach, we hope participating in the events will help open doors through experiences and connections where you will join and lead your civic and legal communities.
- ❖ Working through challenging conversations. MCCE has a long tradition of exploring difficult and controversial issues through Mock Trial competition. Please be mindful of presentation and performance of these pertinent issues for all content each and every year.

Thank you to the amazing sponsors who make Mock Trial happen. The State Bar of Michigan, the Litigation Section of the State Bar of Michigan, the Young Lawyer Section of the State Bar of Michigan, the Oakland County Bar Foundation, the Macomb County Bar Foundation, and numerous educational institutions along with individuals make this possible.



A thank you to the State Bar of Michigan Board of Commissioners for their enduring support of the Michigan Center for Civic Education and its programs which open pathways for students to see themselves as part of the legal community.

We hope you find these materials helpful and informative. We wish you the best of luck at this year's tournaments. As always, please reach out to us if we can be of any assistance.

Sincerely,

Your Mock Trial Team at the The Michigan Center for Civic Education  
[mocktrial@miciviced.org](mailto:mocktrial@miciviced.org)

## **2023-2024 Michigan Mock Trial Rules and Guidelines Table of Contents**

I. Timeline-----	6
II. Michigan Mock Trial Quick Links and Forms-----	7
A. Courtroom Artistry Guidelines-----	7
B. Courtroom Journalism Guidelines-----	7
C. Code of Conduct-----	7
D. School Authorization Form (for non employee coaches)-----	7
E. Star Witness Awards for Attorneys and Witnesses-----	7
F. Team Registration Form - Will Open Nov 1st-----	7
G. Team Membership Form Due Jan 31st-----	7
H. Sample Official Team Roster-----	7
I. Time Cards - Time cards include 10, 5, 2, 1, and STOP-----	7
J. Zoom Backgrounds (for virtual opt-in only)-----	7
K. Timekeepers' Instructions and Timesheet-----	7
L. Court Officer Instructions-----	7
M. Presiding Judge Script (will be available in judges packet)-----	7
N. Performance Rating Guidelines and Criteria-----	7
O. Sample Paper Ballot-----	7
P. MCCE Michigan High School Mock Trial Dispute Form-----	7
III. Equity-----	7
IV. Public Health-----	8
A. Strategies-----	8
B. Virtual Expectations-----	8
V. The National Mock Trial High School Championship (NHSMTTC)-----	8
VI. Michigan Mock Trial Procedures-----	9
A. Team Eligibility Criteria-----	9
B. Team Size - Number of Students-----	9
C. Number of Teams Per School-----	9
D. Registration Window-----	9
E. Materials-----	10
F. Tournament Logistics-----	10
G. Regional Structure-----	11
8. Team Codes-----	11
H. State Championship Tournament-----	13
<b>VII. Emergencies-----</b>	<b>15</b>
A. General-----	15
B. Student Participant Emergency-----	15
C. Timekeeper Emergency-----	16
D. Entire Team Technical Emergency-----	16
E. Presiding or Scoring Judge Emergencies-----	16
<b>VIII. Rules and Procedures for Trials-----</b>	<b>17</b>
A. Governing Law-----	17
B. Principles of Professionalism & Civility - Courtroom and Courthouse Etiquette-----	17
C. Roles-----	17
D. Number of Competitors-----	19
E. Identification of Teams-----	19
F. Gender Neutrality-----	19
G. Trial Communications-----	19

H. Ban on Scouting-----	20
I. Videotaping and/or Recording-----	21
J. Code of Proper Conduct-----	21
K. Jury Trial-----	21
<b>IX. Trial Procedures-----</b>	<b>22</b>
A. Trial Rosters-----	22
B. Commencement of Trial-----	23
C. Virtual Procedures-----	23
D. Motions and Pre-Trial Agreements-----	23
E. Timing Procedures-----	24
F. Attorney Procedure-----	25
G. Witnesses Procedures-----	26
H. Extrapolations-----	26
I. Stipulations-----	27
X. Exhibits-----	27
A. Presentation of Exhibits-----	27
B. Markings / Manipulation of Exhibits-----	27
C. Procedure for Introduction of Exhibits - In-Person-----	27
D. Procedure for Introduction of Exhibits - Virtual-----	28
<b>XI. Completion of Trial-----</b>	<b>28</b>
A. Scoring-----	28
B. Number of Judges-----	29
C. Round Winner Determination-----	29
D. Errors-----	30
E. Star Attorney and Star Witness Awards-----	30
F. Results-----	30
G. Deliberation and Judges' Comments-----	30
XII. Companion Program Section-----	31
A. Purposes-----	31
B. Courtroom Illustration and Artistry-----	31
C. Courtroom Reporting and Journalism-----	31
XIII. Rules of Evidence-----	31
A. Introduction-----	31
B. Michigan High School Mock Trial Rules of Evidence-----	32
ARTICLE I. GENERAL PROVISIONS-----	32
ARTICLE II. JUDICIAL NOTICE-----	32
ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS-----	32
ARTICLE IV. RELEVANCY AND ITS LIMITS-----	32
ARTICLE V. PRIVILEGES-----	34
ARTICLE VI. WITNESSES-----	35
ARTICLE VII. OPINIONS AND EXPERT TESTIMONY-----	37
ARTICLE VIII. HEARSAY-----	38
ARTICLE IX. AUTHENTICATION AND IDENTIFICATION -----	41
ARTICLE X. CONTENTS OF WRITING, RECORDINGS AND PHOTOGRAPHS -----	41
ARTICLE XI. OTHER -----	41

## I. Timeline

Please note this overall timeline for Michigan's Mock Trial Season. Please note these are tentative as we continue to navigate courthouse availability and work on reimagining the community education events. Please see the website for information on monthly coaches roundtables.

- ☐ September
    - ☐ Team Formation and Recruitment begins
  - ☐ October 19, 2023
    - ☐ Online Case Reveal (Recording)
    - ☐ 1st Draft of Rules Available
    - ☐ Initial Release of Case and Fact Pattern
  - ☐ November 1st, 2023
    - ☐ Registration Opens
    - ☐ MCCE Starts Volunteer Recruitment
  - ☐ Regional Clinics
    - ☐ November 13, 2023 - Gerald R. Ford Presidential Museum - Grand Rapids
    - ☐ December 5, 2023 - Mock Trial Clinic - Lansing MIDecember
    - ☐ Southeast, MI - Location TBD
    - ☐ Courtroom Artist and Journalism Session(s)
  - ☐ January 15, 2024
    - ☐ Mock Team(s) Registration Closes
    - ☐ Final Draft of Rules Available
  - ☐ January 29, 2024
    - ☐ Team Member Confirmation
    - ☐ Courtroom Artist and Journalism Registration Closes
  - ☐ Regional Dates - 2024
    - ☐ February 10 - Virtual
    - ☐ February 17 - Wayne/Washtenaw - Coleman Young Building (Detroit)
    - ☐ February 22 - Northern MI - Leelanau County Courthouse (Suttons Bay)
    - ☐ February 24 - Oakland - Oakland County Circuit Court (Pontiac)
    - ☐ March 2 - Macomb - Macomb County Courthouse (Mt. Clemens)
    - ☐ March 2 - Monroe - Monroe County Courthouse (Monroe)
    - ☐ March 9 - Kent - Kent County Courthouse (Grand Rapids)
    - ☐ March 9 - Upper Peninsula - Marquette County Courthouse (Marquette)
    - ☐ March 22 - MCCE Mock Trial Reception - Lansing
    - ☐ March 23 - State Finals - Ingham County Courthouse
    - ☐ May 2-5, 2024, National Mock Trial, Wilmington, Delaware
- For qualifying Mock Trial Legal Team, Artists, and Journalists

## II. Michigan Mock Trial Quick Links and Forms

- A. [Courtroom Artistry Guidelines](#)
- B. [Courtroom Journalism Guidelines](#)
- C. [Code of Conduct](#)
  - 1. A copy of the Code must be signed by all team members and coaches and submitted by a team coach when they register the team at the registration table between 7:45 and 8:15 a.m. on the day of the Tournament.
  - 2. A copy of the Code must be signed by all team members and coaches electronically and submitted electronically at least 24 hours prior to the event.
- D. [School Authorization Form](#) (for non employee coaches)
- E. [Star Witness Awards for Attorneys and Witnesses](#)
- F. **Team Registration Form - Will Open Nov 1st**
- G. **Team Membership Form Due Jan 31st**
  - 1. Teacher(s)/Coaches Names
  - 2. Team/School Members
  - 3. Artists
  - 4. Journalists
- H. [Sample Official Team Roster](#)
- I. [Time Cards](#) - Time cards include 10, 5, 2, 1, and STOP
- J. **Zoom Backgrounds** (for virtual opt-in only)
- K. [Timekeepers' Instructions and Timesheet](#)
  - 1. Schools to bring copies of the time sheet
  - 2. Official time sheets are available online and will be provided at the events.
- L. [Court Officer Instructions](#)
- M. **Presiding Judge Script** (will be available in judges packet)
- N. [Performance Rating Guidelines and Criteria](#)
- O. [Sample Paper Ballot](#)
- P. [MCCE Michigan High School Mock Trial Dispute Form](#)

Completed forms should be filed with the tabulation room for review at the end of the round.

## III. Equity

- A. The Michigan Center for Civic Education Board of Directors establishes the policies and procedures of MCCE's Mock Trial. The following priorities guide the decisions and goals of all programs, services, and activities of MCCE.
  - a. Education
  - b. Accessibility
  - c. Competitive Equity
- B. MCCE strives to model and foster social and academic environments where all students, volunteers, and stakeholders belong. To that extent, MCCE seeks to foster diversity, equity, and inclusion for all mock trial communities to continuously reflect on its practices and operationalize the values of dignity, joy, integrity, respect, leadership, and service.
- C. If you experience any concerns regarding access and equity, please contact us. We will work to provide material and resources to ensure participation.

## **IV. Public Health**

### **A. Strategies**

1. Schools will have discretion to participate in a way appropriate for their situation. Schools are responsible for following public health and/or school guidelines regardless if virtual or in person.
2. MCCE is not responsible for confirming schools adhere to governmental distancing and public health guidelines. MCCE will not be held responsible for failure to adhere to these guidelines.
3. Should a Presiding and/or Scoring Judge see potential distancing or public health concerns, the Presiding Judge should stop the trial, assess the situation, and make any immediate corrections. If corrections are not feasible, MCCE tournament personnel should be notified immediately.
4. MCCE reserves the right to require additional public health mitigation strategies above and beyond local, state, and/or national guidelines to protect the health of the students, communities, volunteers, and staff. These strategies include: masking, social distancing, testing prior to or on site, removal from event due to exposure or symptoms presenting, and related public health mitigation strategies. Should there be need for additional protections, all expectations and requirements will be announced as soon as possible and no later than the week of the event.
5. Please communicate with MCCE for questions and clarifications.

### **B. Virtual Expectations**

1. Connectivity. Schools are responsible for ensuring their technology is in good working order and functional prior to the trial. For the purpose(s) of adapting to each school's needs, MCCE permits the following configurations as permitted by public health and distancing guidelines.
  - a. Students connecting individually (one camera per person).
  - b. Students connecting as sections of or as a whole team (one or multiple cameras per group(s) of students).
2. Judges are expected to connect individually (one camera per judge) whenever possible.

## **V. The National Mock Trial High School Championship (NHSMTC)**

- A. MCCE is the official Mock Trial organization in Michigan and holds the membership to the National High School Mock Trial Championship.
- B. MCCE will help facilitate your registration process for the Michigan Mock Trial State Champion. Schools and students will be responsible for planning their own travel and cover travel expenses.
- C. NHMSTC sets a \$500 registration fee for each team and a \$75 registration fee for each artist and journalist. It is our policy that MCCE will cover registration for teams and students, as long as funding is available.
- D. There are unique rules and policies that govern the national championship; there are some similarities and some differences. For the team along with artists and journalists that qualify for the national championship, please see those rules at: <https://www.nationalmocktrial.org>
- E. Specific draft rules for the national championship can be found [here](#).



## VI. Michigan Mock Trial Procedures

### A. Team Eligibility Criteria

1. An authorized adult must be sanctioned by the school to be present during any MCCE event or program with each team. A school authorization form is available online for coaches and volunteers who are not employed by the school they are affiliated with.
2. The Tournament is open to all public, non-public and home schools, and select, pre-approved community based teams in Michigan.
  - a. Requests from home schools or local clubs/organizations may be considered if the structure adheres closely to a school structure.
  - b. Requests to combine students from more than one school to form a team will be considered on a case-by-case basis. Teams must seek written permission for alternate team structure from MCCE Tournament personnel at least one week before the January registration deadline.
  - c. Any MCCE authorized exceptions would apply to regional competition in Michigan only and may exclude teams at the MCCE state final and/or NHSMTC national final events.
  - d. Any MCCE authorized exceptions apply for a single program or competition year. Exceptions need to be applied for annually and are not guaranteed to be approved until submitted each year.
3. Students must be enrolled in 9th, 10th, 11th, or 12th grade. (A middle school event will be established in the near future.)

### B. Team Size - Number of Students

1. An official team consists of six to twelve students from the same school and one or more adult coaches. Because there are a total of twelve roles to be played (6 prosecution/plaintiff and 6 defense), depending upon the size of the team, members of a team will have to take on dual roles (playing both P and D).
2. Timekeepers may or may not be an official member of the team. Timekeepers must not be one of the six students active in the trial they are timing.
3. Note: For the National High School Mock Trial Championship, the qualifying team is only permitted 6-9 team members inclusive of timekeeper(s).

### C. Number of Teams Per School

1. Each individual school may enter up to 3 separate, individual team units for any one regional event.
2. For 2023-2024, MCCE will pilot lifting the cap on the total number of teams entered from an individual school for the season, if the third, fourth, or fifth team would be willing to attend a separate regional (and no more than two regionals). Should a school have 3 or more teams and wish to compete, MCCE will work with those schools to attend two distinct regionals in newer regionals to provide opportunities for new regionals to grow.
3. Students must remain within their dedicated team unit for the entire season.
4. Each team will be treated as a unique team for the purposes of competition.
5. If teams from the same school advance to states from multiple regionals, the school must select a single regional from which to advance a team to State Finals.

### D. Registration Window

1. The registration window opens in early November and closes in early January. (Registration fees are not refunded after the January deadline in the event a team withdraws from competition.)

2. Membership forms plus Courtroom Artist and Courtroom Journalism entries are due at the end of January.
3. Please contact MCCE if for any reason you find yourself wanting to participate and cannot meet these deadlines. Our overall philosophy is to enable as much access as possible.
4. School Orientation
  - a. Schools are expected to attend an orientation. Schools may designate a smaller group of students to attend in lieu of an entire team attending. The purpose of the school orientation sessions is to make sure students and teachers have all their questions addressed and can positively anticipate the events.
  - b. Virtual Orientation will take place for schools and for volunteers in early February.

#### **E. Materials**

1. Judges will be provided copies of relevant scripts and judging materials ahead of their assigned event, and hard copies upon arrival.
2. All schools will receive event materials including certificates and awards on site (in person) or mailed (if virtual).
3. Material Permissions
  - a. These materials may be used for educational purposes including classroom practices, invitations, and more. Please attribute credit to MCCE (and any prior versions as well) in your use of the materials.
4. All MCCE Case Materials are closed packets, the fact pattern, applicable laws and jurisprudence, rules of evidence and competition rules are the only materials to be referenced in a trial or competition setting. Case law, previous versions of the rules, materials not included in the published packets of case materials and rules cannot be used during trials or competitions to enforce a rule, introduce a point or otherwise direct the actions of a competition action.

#### **F. Tournament Logistics**

1. We are guests in these courthouses and all participants should be especially careful to observe appropriate standards of behavior.
2. [Code of Proper Conduct](#) provides that participants should not go anywhere in the building other than courtrooms, eating areas, and restrooms. It also states that food or beverages not be brought into the courtrooms or anywhere other than designated eating areas. See Code of Proper Conduct in these materials.
3. Teams are responsible for their transportation to all events and programs.
4. The authorized adult must remain with the team throughout all events and programs.
5. Meals are typically not provided, exceptions to this will be communicated per event with participating teams and students.
6. Arrival, parking and other relevant information for each event will be provided by tournament staff prior to the events.
7. Questions about locations, courthouses or any tournament details should be directed to MCCE staff or designated regional personnel not to the courthouses.

## G. Regional Structure

1. Typically, the regional tournaments and state final will be conducted at various courthouse locations throughout Michigan in February and March of the competition season.
2. MCCE offers mock trials at the discretion of courthouse personnel and their availability. Most events are Saturdays with select on weekdays.
3. In 2023, MCCE expanded the rules to encourage the participation of more students in Mock Trial by expanding to new regions. MCCE will allow schools with three or more competing teams to enter teams in up to two regional tournaments for the purpose of expanding the geographical reach of MCCE mock trial.
4. Upon registering, schools will identify a 1st and 2nd choice regional for competition.
5. After the January registration deadline, schools will be assigned to their first or second choice depending on date of entry, capacity, and any other relevant considerations. MCCE may choose to cancel a regional if there are an insufficient number of teams registered and will assign those teams to other regionals appropriately. Similarly, should the number of teams registered exceed capacity, MCCE will work with schools to reassign to an available regional.
6. At each Regional Tournament there will be three rounds of trials - typically two before lunch, a lunch break, and a third and final trial round after lunch.
7. **Regional Tournament Pairing**
  - a. New Software - Tabroom.com. For 2023-2024, MCCE will pilot a new tournament pairing system which affords greater flexibility and pairing in real-time. The below parameters will guide the use of the software through the season. Should changes and updates be made, MCCE will communicate those when appropriate.
  - b. For the purposes of this section, a team is defined as the specific set 6-12 students competing as a unit. School is defined as all possible teams from the same educational institution.
  - c. For the first two trials of each regional, teams are paired randomly but under the following parameters so long as the number of teams permit this to occur;
    - i. At least one round on each side of the case (P and D).
    - ii. Not paired with the same school twice. This means teams will not be paired with a team from the same school in rounds 1 and 2.
  - d. For the third trial at each regional, restrictions on teams not paired against teams from their own school will be lifted. This means teams may compete against teams from their same school. Each team is treated as an independent unit, therefore teams may compete against other team(s) from their own school in round 3.
  - e. Depending on the size of the tournament and other variables, it is possible for a team to meet the same team, on a different side of the case.
  - f. Sides. All teams will be assigned at least one round as the Plaintiff/Prosecution and at least one as the Defense. \*Possible exceptions may include if there is an odd number of teams competing.
8. **Team Codes**
  - a. At registration, teams will be informed of their unique code that will be used for identification purposes at the tournament. Codes are unique to each team (not for a school).

- b. Upon all teams registering, a schematic will be generated by Tabroom.com adhering to the criteria above.
  - c. All persons registered with Tabroom.com will have access to the schematics. Push notifications are available should you sign up with a team.
  - d. Additional clarifications will be available as MCCE pilots this software
9. **Sample Schematic.** Please see a sample schematic below (this assumes 14 teams which may not be the case for most regionals):

# Courtroom Assignments and Team Pairings This is for school Zoom Room Location Only - JUDGE PAIRING TO BE DISTRIBUTED AFTER JUDGE ORIENTATION Links to Zoom Rooms Provided


Welcome!

REGISTRATION AND TEAM NUMBER DRAW 7:45-8:15 a.m. (Zoom breakout room for draw)

ROUND 1 8:30 a.m.			ROUND 2 10:45 a.m.			L U N C H *	ROUND 3 2:00 p.m.		
Zoom Room	Prosecution	Defense	Zoom Room	Prosecution	Defense		Zoom Room	Prosecution	Defense
A	1	2	A	12	13		A	9	11
B	3	4	B	6	7		B	10	13
C	5	6	C	2	3		C	14	12
D	7	8	D	14	9		D	1	3
E	9	10	E	8	5		E	2	4
F	11	12	F	4	1		F	6	8
G	13	14	G	10	11		G	5	7

REFLECTIONS, AWARDS, AND ANNOUNCEMENTS - APPROXIMATELY 4:30 p.m. Jury Room

Have an amazing day of learning and fun.



Michigan Center for Civic Education

WWW.MICIVICED.ORG

Educating for Vibrant Civic Communities

## 10. Example Schedule for Regional Events

### In Person

7:30–8:15 a.m.	Team Arrival and Registration
7:45–8:25 a.m.	Judge arrival and Orientation Court Officer and Time Keeper Training
8:30–10:30 a.m.	Round One
10:45 a.m.–12:45 p.m.	Round Two
12:45–2:00 p.m.	Lunch
1:15–1:55 p.m.	Judge Orientation Court Officer Training
2:00–4:00 p.m.	Round Three
4:30 p.m.	Closing Session and Awards
5:00 p.m.	Dismissal

### Virtual

	Teachers/Coaches	Students	Volunteers
Prior	Optional School Orientation	Optional School Orientation	Officer and Judge Orientation
Day of Regional			
7:15 am	School Check In		Volunteer Check In
7:45 am		Student Time Keeper Orientation	
8:20 am	Log into First Trial	Log into First Trial	
<b>8:30 am</b>	<b>First Trial Begins</b>		
<b>11:15 am</b>	<b>Second Trial Begins</b>		
Lunch Break	30 minutes est lunch break (to 2:15)		
2:35 pm	Log into Third Trial	Log into Third Trial	
<b>2:40 pm</b>	<b>Third Trial Begins</b>		
5:00 pm	Reflection, Remarks, and Awards Begins		
5:45 pm	Dismissal		

## H. State Championship Tournament

### 1. Location

- A specified number of teams (based on courthouse and courtroom availability) will compete in the State Finals Tournament. The event is typically held in Lansing at the Veterans Memorial Courthouse (313 W Kalamazoo St, Lansing, MI 48933).

### 2. Advancement Criteria

- Advancement to the State Finals will be governed by the following criteria: In this order
- Win/Loss Record – equals the number of rounds won or lost by a team (in a three round regional, this may be 3-0, 2-1, 1-2, or 0-3);
- Total Number of Ballots – equals the number of scoring judges' votes/wins a team earned (this is up to 9 - if less than 3 ballots per round, scores are averaged to represent a third judge);
- Total Number of Points Accumulated;
- Margin of Victory/Point Spread Against Opponents – 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.

### 3. Selection of State Finalists

- The finalists will be selected from the teams that performed the best of each regional tournament. The projected number of teams in the Final Tournament from each Regional Tournament will be in close proportion to the total number of teams competing in each regional tournament.
- If the number of participating teams in any regional tournament changes (due to dropouts, etc.) the MCCE may revise its projections at any point in the season.

- c. Typically, but not exclusively, 10-15% advance from regionals to attend state finals. The goal will be to have an even number of teams participating which could also include a wildcard invitation. We expect to use a variation of this chart to determine the number of teams per regionals to advance to states.

MCCE anticipates that the top 10 to 12 (or otherwise courtroom space permitting) will advance to State Finals. Please know the number will be modified after registration confirmation and courtroom availability.				
Regional	# Teams as of....	# Teams Advance	% of Teams Advancing	Notes (If wildcard and/or error)
Virtual				
Regional 1				
Regional 2				
Regional 3				
Regionals 4.... +				
Total Teams Advancing				

- d. Wildcard - A wildcard spot may be awarded, if warranted. The team awarded the wildcard will be the team with the highest record (wins, ballots, points) across selected regional tournaments. Teams will be notified in advance if a wildcard will be awarded.
- e. MCCE has the right to change the number of qualifying teams at its sole discretion due to extenuating circumstances including but not limited to odd number of teams advancing, MCCE errors in scoring, courthouse availability, extenuating team circumstances, and the like.
- 4. State Finals - Preliminary Pairing.**
- In the State Final Tournament, teams will be paired based on their Regional totals.
  - Sides and pairings in the first two rounds of the State Final Tournament will be determined by the teams' Regional totals.
  - The team seeds will not be released prior to the day of the state tournament.
- 5. State Finals - Elimination Round Pairing.**
- Pairings in the semi-final round of the State Final Tournament will be determined by the totals from the first two rounds. With the four top teams ranked 1- 4, the pairings for the semi-final round will be: 1 v. 4, and 2 v. 3.
    - THIS MAY BE MODIFIED IN THE EVENT THAT A SCHOOL HAS TWO TEAMS IN THE SEMI-FINAL ROUNDS. In such a case, the Two Teams From The Same School Will Face Each Other In The Semi-Final Round So As To Avoid A Final Round With Teams From The Same School.
  - The winner of each semi-final round will advance to the final round.

## **6. State Finals - Elimination Round Sides Determination.**

- a. In determining sides in the semi-final rounds and the final championship round of the State Final Tournament, the following procedure will be used:
- b. If paired teams represented opposite sides in the previous round, sides will be flipped for the semi-final round.
- c. If paired teams represented the same side in Semi-Finals round, the following procedure will be used:
  - i. The team with the numerical and/or alphabetical code (not ranking) which comes first numerically will be considered the “Designated Team.”
  - ii. A coin will be tossed by the tournament director or their designee.
  - iii. If the coin comes up heads, the Designated Team will represent the plaintiff/prosecution. If the coin comes up tails the “Designated Team” becomes the defendant.
- d. If either method above creates a rematch (pairing and sides) from a trial earlier in the day, sides will be flipped.
- e. At the discretion of the tournament director, this process may be altered to accommodate special circumstances.

## **VII. Emergencies**

### **A. General**

1. During any trial the Presiding Judge shall have discretion to declare an emergency and adjourn the trial for a short period of time.
2. In the event of an emergency that would cause a team to be unable to continue a trial or to participate with less than six members, the team must notify MCCE tournament personnel or its designees as soon as is reasonably practical.
  - a. If MCCE or its tournament designees, or its designee(s), in its sole discretion, agrees that an emergency exists, MCCE, or its designee(s), shall declare an emergency and will decide whether the team will forfeit or may direct that the team take appropriate measures to continue any trial round with less than six members.
  - b. Final determination of emergency, forfeiture, reduction of points, or advancement, will be made by MCCE in accordance with the situation. This could range from 0 to an average depending on the situation.
  - c. The non-forfeiting team will receive a win and an average number points they earned in their other trials following the bye procedure.
  - d. For purposes of this rule, technical difficulties include complete internet failure and computer, device or microphone failure; failure of a camera only does not permit emergency substitution under this rule. Students and judges who lose internet connection shall rejoin the trial using a telephonic connection, if possible.

### **B. Student Participant Emergency**

1. In the event of technical difficulties during the trial in a virtual competition, the Presiding Judge shall have discretion to declare a brief recess to resolve any technical difficulty substantially impairing a participant’s participation in the trial. If the technical difficulty cannot be resolved within a reasonable, but brief, amount of time, then the trial will continue with another member of the impacted team substituting for the impacted team member.
2. The emergency substitute must be a member of the same team and on the active roster for that trial. No alternates beyond the roster list of active members for that trial may be a substitute once a trial has begun.



3. Before making an emergency substitution, the impacted team must make the Presiding Judge aware, by stating words to the effect of, “Your honor, before I begin I would like to inform the court that I am [insert name and I am substituting for [insert name/role], who is unable to compete due to [insert emergency].” Teams and the Presiding Judge shall advise MCCE of any emergency substitution following the round of competition. The presentation will be scored based on the performance by the initial team member and the emergency substitute, taken as a whole.
4. Once the Presiding Judge determines either at the request of the team or sua sponte that a student is unable to compete in a role due to technical difficulties, to minimize disruption, the team may proceed with the trial. If the technical difficulty is resolved prior to the role of the impacted participant starting, they may return and participate in their role(s), if any. For purposes of this rule, if the replacement student begins their participation in the trial, the impacted student may not return and participate until the entire role in which the replacement student began is completed.

#### **C. Timekeeper Emergency**

1. In the event of a loss of connection for a timekeeper, that team shall defer to its opponent’s timekeeper for that trial segment. The team whose timekeeper lost connection may substitute another qualified timekeeper for the remaining trial segments.
2. The timekeepers shall confer consistent with the process outlined in the time keeping section.

#### **D. Entire Team Technical Emergency**

1. In the event that a technical emergency prevents an entire team from completing in part or all of a round, the Presiding Judge shall declare a recess of up to 15 minutes, to allow that team to reconnect, either via video or by connecting on audio-only via telephone. If reconnection is impossible, a forfeit shall be declared in favor of the team that maintains its connection. If at least five witnesses have been subject to cross-examination, the MCCE tournament personnel or its designee may in its sole discretion complete the ballot, assigning scores equal to their average score on all segments that could not be completed by the disconnected team and a “10” to the team that remained connected,
2. No student or team may feign technical difficulty or invoke the technical difficulty rule for purposes other than a genuine technical difficulty. Such an act would violate the Rules of Competition and Code of Ethical Conduct and may be sanctioned at the discretion of MCCE or its tournament designees through point deductions or other means up to and including disqualification from the competition.

#### **E. Presiding or Scoring Judge Emergencies.**

1. Technical emergencies resulting from the loss of the connection of a Presiding or Scoring Judge shall be handled as if a typical emergency. In the event of an emergency (i.e., sudden illness, etc.), if a judging panel member must leave the courtroom or the virtual competition platform, the Presiding Judge will call for a brief recess and assess whether the judging panel member will be able to return in a reasonably short period of time. If the panel member is unable to return to the courtroom or virtual competition platform in a reasonably short period of time, the tournament personnel must be informed. Once the panel composition is adjusted to best meet the requirements of the rules, then the round should continue. During any recess under this rule, the teams, whenever possible, should remain in their appropriate positions within the courtroom or in the virtual competition platform until the round resumes.



2. If the technical or other emergency impacts the Presiding Judge, a designated scoring judge will serve as the Presiding Judge until the dispute resolution committee can be informed and can act to adjust the panel composition.
3. In the event that a judge's ballot needs to be disqualified during or following the conclusion of a round, if there are two legal ballots remaining, a third ballot will be generated consisting of the average total score of those two ballots and therefore determine the winner of the third ballot. This third ballot will be the official ballot.

## **VIII. Rules and Procedures for Trials**

### **A. Governing Law**

1. All trials will be governed by the Tournament Rules, and may rely on the case law included in the Tournament Materials. No reference to other legal authorities (except for the ones provided in the case materials) should be made.

### **B. Principles of Professionalism & Civility - Courtroom and Courthouse Etiquette**

1. MCCE Mock Trial is advancing the Michigan Supreme Court and State Bar of Michigan's Principles of Professionalism and Civility. Always be courteous to witnesses, other attorneys, judges, and all those supporting Mock Trials. You will find these Principles integrated in the new scoring rubrics.
  - a. In-Person: rise when addressing the judge if available. Virtual: no need to rise.
  - b. Always address remarks to the Judge and Jury; never address remarks to opposing counsel.
  - c. Always ask for permission from the judge to approach the bench and the jury box. While natural movement of attorneys during trial is encouraged, always seek permission.
  - d. Avoid making objections unless you are relatively sure that the judge will agree with you. Avoid using frivolous or obscure objections as a ploy to control time or "stump" another team.
  - e. If the judge rules against you on a point or in the case, take the defeat gracefully and act cordially toward the judge and jury and the opposing team.

### **C. Roles**

1. Timekeepers - Responsibilities and Guidelines
  - a. Time Keepers are responsible for fairly and accurately keeping and reporting the time during the trial presentation and during any disputes.
  - b. The team's official timekeeper will keep time for both sides during all competition rounds.
  - c. Timekeepers are to act as a neutral entity.
  - d. Timekeepers are not to communicate with their respective teams during the course of the trial presentation, recesses, or during any dispute procedure, expect to display the time remaining or to indicate (as directed by the Presiding Judge) how much time is remaining during a particular part of the trial.
  - e. Each team is responsible for providing an official timekeeper for each trial. The timekeeper may be a member of the team, a student, or adult who is not part of the competing team.

- f. Coaches may not be timekeepers (unless authorized by MCCE in an emergency). When timing for a trial, a student or adult from each time will keep time and consult on timing.
- g. MCCE will make every effort to assign a Court Officer to each courtroom. In the event that a courtroom is not assigned a Court Officer, the teams' timekeepers will keep the official time for the round.
- h. Orientation.
  - i. Each team's official timekeeper(s) is required to attend the scheduled on-site or virtual timekeeper orientation.
  - ii. If a team chooses to assign more than one student to the timekeeper role, then all students who will be assigned to the timekeeper role must attend the timekeeper orientation.
  - iii. If a team does not send an official timekeeper to the required orientation meeting, that team will defer to its opponents' official timekeeper(s) in all rounds.
- i. **Timing Devices**
  - i. For in-person events, stopwatches will be provided by the tournament.
  - ii. For virtual events, students may use their own stopwatching or other timing devices as long as the device both a) keeps track of seconds, b) has an equivalent of airplane mode or is silenced, and b) is not used for communication with team members.
- j. **Time Cards / Time Communications**
  - i. For in person events, time keepers will use the numbered minute and stop time cards provided by the tournament. Teams are not permitted to use other cards.
  - ii. For virtual competitions, timekeepers shall confer using the "chat" or similar feature regarding how much time remains for each team.
  - iii. For virtual competitions, the timekeepers must signal time by posting the permitted time signals in the chat function of the virtual competition platform (e.g. Zoom). The time keepers shall post the time remaining in the chat after each task. The time keepers also may display the "Time Remaining" cards by activating their camera to do so.

## 2. Court Officers

- a. Court Officers are responsible for oversight of one or more trials at a time. Court Officers are also liaisons between the courtroom and MCCE tournament personnel.
- b. Every attempt will be made to have one court officer in each courtroom.
- c. In the event that is not possible, Court Officers will be assigned to a set of 2-4 courtrooms. Court Officers act as a liaison to the Tournament Director, oversee time-keepers, collect and check score sheets, and generally assist and advise the judges.
- d. Court Officers also track the overall time of the trial to ensure that judges complete feedback in time to allow competitors to reach their next round of competition.

### 3. Judges

- a. Two types of judges will assess the students' performance - Presiding Judges and Scoring Judges. All judges, Scoring and Presiding, will score the competitors.
- b. Presiding Judges
  - i. The Presiding Judge presides over the trial; including starting on time, holding courtroom attendees to decorum and running the trial proceedings.
  - ii. The Presiding Judge will be responsible for swearing in witnesses.
- c. Scoring Judges
  - i. Whenever possible, two scoring judges (in addition to the Presiding Judge) will be present at all times to judge the performance of the competing teams.
  - ii. Scoring Judges may not participate in conducting the trial. The Scoring Judges must sit in the jury box or other appropriate location and the participants should address them as though they were the jury.
- d. Each judge will be supplied with a full Tournament packet and will attend an Orientation Meeting.

### D. Number of Competitors

1. Each participating high school team must be composed of from 6 to 12 students from the same school.
2. During a single trial round, six students from that team must participate, three as attorneys and three as witnesses. No more than six students from a team may participate in a single trial/round. (Note: The National Mock Trial Team limit is 9 students.)
3. Teams are not permitted to include alternates on their official team roster if including such alternates would create a team of more than 12 students.

### E. Identification of Teams

1. A team's identity should not be revealed to any judge. Team members should not wear or carry any item that identifies the school the team members represent. Each team will have a designated code made up of numbers or letters.
2. For Virtual Competitions, this should include a careful examination of virtual backgrounds. A generic MCCE/Mock Trial Zoom background will be provided as an option.

### F. Gender Neutrality

1. Where possible, all witnesses in the case are written to be gender neutral and may be played by a student of any gender. If a witness must be a specific gender, the role may still be played by a student of any gender.

### G. Trial Communications

1. **Ban on Coaching During Trial.** Once the trial begins no coaching is permitted by anyone for the duration of the trial. Student attorneys may consult with one another and with their witnesses.
2. To avoid even the appearance of impropriety, no communication of any kind is allowed between the students participating in the case (the three attorneys and the three witnesses) and other team members, coaches, or observers until after closing arguments.
3. During a virtual competition, only the six participating team members may communicate with one another. The six participating team members may use computers, cellular phones, or other devices to facilitate this communication.

4. Coaches, teachers, alternates, and observers must remain outside the bar in the spectator/audience section of the courtroom. Only team members participating in the round may sit inside the bar and communicate with each other.
5. During a virtual competition, no team member, coach, or judge nor students may use the “chat” or a variation of “chat” of the electronic platform expect to
  - a. Display timekeeping messages as permitted above,
  - b. Communicate in the case of a technical emergency where audio and video functions are lost but access to the “chat” function remains, and/or
  - c. Participants need to communicate about a real life medical emergency.
6. Observers are not permitted to interact with the participating students during the trial in any way including use of the chat or instant messaging functions at any time.
7. Violations. Any team member (including team members not participating in the trial and coaches) who observes any violation of this rule must report it *immediately* to the Presiding Judge. The Presiding Judge must order the clock stopped and inquire into the circumstances of the accusation. Where a violation is found, the judges may deduct 10 points from a team’s total score on the performance rating sheet.
8. These rules on communication during trial remain in force during any recess that may occur.

#### **H. Ban on Scouting**

1. No team members, alternates, teachers or attorney coaches or any other persons associated with the team’s preparation may view other teams in competition, other than those paired against them, so long as they remain in competition themselves.
2. This includes sharing Zoom links or otherwise connecting to trials other than your affiliated trial. Teachers and coaches will authorize, in coordination with the Court Officer, permitted guests which may be limited for bandwidth considerations.
3. Virtual. Bandwidth considerations and guests. Please check January revisions for guest and observer guidelines. Please be advised observers may be limited to ensure adequate bandwidth for competitors and Judges. Observers will be required to mute their microphone and stop their video.
4. No person shall display anything that identifies their school, region, or organization of origin while in the proceedings.
5. It is not a violation of this rule for a team to participate voluntarily in practice, scrimmages, and/or invitationals in advance of MCCE competition events. It is a violation of this rule to share information learned from practices, scrimmages, and/or invitations with teams not directly involved in the events.
6. To the extent that a team or its members make its own information publicly available that bears on its strategy or other issues that would normally constitute the object of scouting, it shall not constitute a violation of these rules.
7. The Michigan Center for Civic Education has at its discretion, the ability to invite members to observe trials. Guests of MCCE may include program officers, educational directors, interested new teachers and coaches, and interested community members. Guests will be identified as authorized by MCCE tournament personnel.

#### **I. Videotaping and/or Recording**

1. Videotaping and/or Recording refers to all variations of capturing the trial including video recording, Zoom recordings, audio recordings and the like. This includes external devices (such as phones) or web-based applications.

2. Any team may videotape or record its trials. The opposing team and the Presiding Judge must be notified prior to the calling of the case.
3. In order to promote civic and law-related education, all teachers and coaches consent to a video, audio, and/or likeness for all events. MCCE or its designee may use materials for acknowledgements, publicity, and the like on a variety of platforms. If a student or person needs to be exempt, please follow the process outlined in the registration materials *and tell the officer prior to the start of the trial.*
4. No team may post, share with another competing team, or otherwise disseminate any recording of any competition round prior to the conclusion of state finals. Each coach or teacher will inform all community members including parents, guardians, coaches, administrators, or other observers of this rule. Violations of this rule, even by an individual who is not a team member, may result in sanction of the team affiliated with the individual who recorded and/or posted, shared, or otherwise disseminated the recording up to and including disqualification from the competition. MCCE, or its designee, may permit exceptions to this rule for promotional coverage, acknowledgements, and the like.

#### **J. Code of Proper Conduct**

1. The Code of Proper Conduct governs all team members, coaches, and supporters, such as fellow students and parents/guardians who are present during the Tournament.
2. For in-person events, a copy of the Code must be signed by all team members and coaches and submitted to the Tournament. This may be done in advance through a MCCE specified system or at the registration table upon arrival on the day of the Regional Tournament. Teams are responsible for ensuring invited guests are aware of and adhere to the Code and its rules regarding conduct during the Tournament.
3. MCCE will accept a digital agreement to the Code of Conduct by observers, who register at least 48 hours prior to the start of the event. This form will be made available on MCCE's website.
4. For virtual events, an electronic form will be provided for all team members and coaches to be signed and submitted during or before registration on the day of the Tournament.

#### **K. Jury Trial**

1. The case will be tried to a jury; arguments are to be made to judge and jury. Teams may address the Scoring Judges as the jury.
2. For in-person competitions, the Scoring Judges will typically sit in the jury box whenever available. For virtual competitions, teams may still address the Scoring Judges as the Jury.
3. Claims of Rule Violations
  - a. Any claim of a violation of a Tournament rule should be immediately called to the attention of the Presiding Judge.
  - b. Only the student attorneys trying the case may raise violations of all other rules.
  - c. Routine rule violations, such as the wrong attorney objecting, must be brought to the attention of the Presiding Judge when the violation occurs. Any question regarding the application of tournament rules by the Presiding Judge must be raised prior to closing arguments.
4. **Claims of Rule Violations Rising to the Level Requiring Dispute Resolution**
  - a. A claimed violation of the ban on coaching during a trial may be raised by any team member through the [Dispute Form](#).

- b. Violations that rise above the routine should be addressed through the [Dispute Form](#). The procedure outlined below is only intended to be used in the most unusual of circumstances
- c. If, immediately after closing arguments, a team has serious reason to believe that a material rules violation has occurred, and the team was unable (as opposed to unprepared) to raise the issue at the time the violation occurred, a **student member** of the team must indicate that the team intends to file a dispute.
- d. The Judges will proceed with their scoring uninterrupted. Each team will have one dispute form in their registration packet, additional forms can be acquired by tournament staff. An online version of the form is available for virtual trials.
- e. The student may only communicate with the counsel and/or student witnesses who are actively participating in the trial before preparing the form.
- f. At **no time** in this process may team sponsors or coaches communicate or consult with the active team members. Only student attorneys may invoke the dispute procedure.
- g. The Presiding Judge will collect the form and review the dispute.
- h. If the dispute is denied, the Presiding Judge will record the reasons for this, and announce the decision as soon as appropriate.
- i. If the Judge(s) feel the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response.
- j. After this, each team will designate a spokesperson. After the spokespersons have had time (not to exceed three minutes) to prepare, the Presiding Judge will conduct a hearing on the dispute, providing each spokesperson three minutes for a presentation.
- k. The Judge may question the spokespersons. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys.
- l. The judges' decision will be recorded in writing on the dispute form and attached to the scoresheets, with no further announcement.
- m. The judges will consider the dispute before making their final scoring decisions. The dispute may or may not affect the final decision or scores, but the matter will be left to the discretion of the scoring judges.
- n. Should the dispute resolution process occur, the Presiding Judge shall notify and provide the completed dispute resolution form to MCCE tournament staff.

## IX. Trial Procedures

### A. Trial Rosters

1. A "trial roster" is the official list of active students who will be performing in any given trial.
2. Each team should bring 15 copies of the roster with them for Regional competitions and 20 copies to the state competition.
3. In each trial an active trial team member will deliver a roster to the opposing team as soon as possible. When the judges arrive they should also deliver 1 copy to the Presiding Judge and a copy to each scoring judge. The roster must include:
  - a. The name of each attorney and the names of each witness that attorney will examine;
  - b. The name of each student who is portraying each witness. The roster should also provide any pronouns student participants would like to be referred to so that



references to such parties will be made using the preferred pronouns. (See sample Roster form)

4. No substitutions of students beyond the six designated may be made once the trial begins (unless covered by emergencies above). Refer to the emergency section of rules.
5. Note that the judges should not know the identities of the schools so this inquiry should be done without revealing the identity of any team to the judges.
6. For virtual events, electronic copies of the roster will be provided by the team to the Presiding Judge and the Courtroom Officer via shared files in the Chat.

## **B. Commencement of Trial**

1. A team's active six students who will try the case and an adult coach must report to the assigned courtroom and present themselves to the Presiding Judge or Courtroom Officer.
2. The Presiding Judge must inquire whether anyone present is connected with any other teams in the tournament other than the teams competing in that courtroom. Anyone in the wrong courtroom should be directed to the correct courtroom or to Tournament Headquarters.
3. The Presiding Judge will call the courtroom to order to commence the trial. The Presiding Judge will ask counsel to state their appearances for the record and thereafter the trial will proceed.

## **C. Virtual Procedures**

1. Virtual Naming Convention. Students and coaches will be expected to rename themselves generally as:
  - a. Zoom Courtroom Number, Team Code, Prosecution/Plaintiff or Defense (P or D), Role (See below)
    - i. W (witness), A (attorney), T (time keeper), ART (artist) JNL (journalist)
    - ii. If a witness, witness name followed by real name
    - iii. If an attorney, a timekeeper, artist or journalist use your real name
2. Virtual Backgrounds
  - a. Backgrounds should be minimal and not be used as a prop, costume, or to indicate school affiliation. Bandwidth considerations may determine who may use backgrounds.

## **D. Motions and Pre-Trial Agreements**

1. Motions - No motions may be made by either party, nor entertained by the Court. In the event of an emergency, a recess may be called. Should a recess be called, teams are not to communicate with any observers, coaches, or instructors.
2. No Pre-Trial Agreements - Pre-trial agreements between teams (such as agreements to not pursue certain lines of questioning) are not permitted. Agreements between parties are stipulated in the tournament packet.

## **E. Timing Procedures**

1. Each party is required to call all three of its witnesses, but may do so in any order. Witnesses may not be ordered sequestered.
2. The order of the trial and the time limits are as follows:

Opening Statement*	5 Minutes per Side
Direct Examination and Redirect (optional)	25 Minutes per Side
Cross Examination and Recross (optional)	20 Minutes per Side

Closing Argument	5 Minutes per Side
Judge Deliberation	10 Minutes Max
Teams Exchange Star Awards	(during Judge Deliberation)
Judges' Comments (time depending)	15 Minutes Max
*Defense may reserve Opening Statement until after the Plaintiff/Prosecution's Case-in-Chief	

3. Timekeepers will be provided with a stopwatch and time cards at timekeeper training.
4. Timekeepers will be asked to display time at the following time remaining intervals; 10, 5, 2, and 1 minute.
5. The timekeepers must keep track of time on a time-sheet ([Timekeeper Instructions and Updated 2023 Timesheet](#)), which must be available for inspection by either side at any time.
6. The timekeepers must inform the appropriate participants and the judge whenever a party has one minute left in any portion of its allotted time by holding up a one-minute time remaining sign.
7. When time is up, the timekeepers will announce "time" and display their time cards. A side may not continue beyond the time limits unless the Presiding Judge, for good cause shown, grants additional time.
8. Should a team desire an audible time notification for any reason including accessibility, it is the team's obligation to work with the timekeepers during the Roster exchange to ensure this process is followed.
9. Attorneys are not required to use the entire time allotted to each part of the trial. Time left over in one part of the trial cannot be carried over to another part of the trial.
10. Time DOES NOT STOP for objections, responses, or the introduction of exhibits. Time for administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements.
11. In the event that a team believes an error has occurred with regard to timekeeping, the team must bring the issue to the attention of the Presiding Judge *at the time* the potential error is recognized.
12. Requests for additional time. Requests for additional time are not permitted, except:
  - a. Opposing counsel has made frivolous objections in an attempt to waste time and the team can show good cause to the Presiding Judge.
  - b. Discrepancies are uncovered impacting a party's allotted time.
13. The Presiding Judge may, at their discretion, instruct the timekeeper to stop time while handling the timing issue at hand. If time is stopped, time must start upon the Presiding Judge's ruling on the objection.

#### **F. Attorney Procedure**

1. Division of Labor-Of the three attorneys on a team, one must give the opening statement, and another must give the closing statement. The same attorney may not give both the opening and the closing statement.
2. Each of the three attorneys must also conduct all direct examination and objections as for one witness for the attorney's side and for cross examination and objections as that one witness for the opposing side.
3. Attorneys may consult with one another and with the witnesses, but with no one else. See Rule VI.G.1 regarding Ban on Coaching.



4. When arguing a point, attorneys should direct their remarks to the court, not to opposing counsel.
5. Standing / Sitting General guidelines:
  - a. The attorney should stand if possible when addressing the court, a witness, or the jury.
  - b. Ability or inability to stand will not impact presentation or other scoring criteria.
  - c. Students should perform to their ability. No Judge shall assess based on a student's ability to stand or sit. Accessibility matters.
  - d. For virtual trials, student attorneys may remain seated for all parts of the trial and all objections shall be made while seated.
6. Reference to Case Materials. Attorneys are encouraged to call the court's attention to particular parts of the case materials, as well as these Rules, in support of points being urged upon the Court.
7. Voir dire is not permitted.
8. Opening Statements
  - a. Each side will have up to five minutes to present its opening statement. The Plaintiff/Prosecution gives the opening statement first.
  - b. The Defense may present its opening statement immediately after the Plaintiff/Prosecution's opening statement or may reserve it until after the close of the Plaintiff/Prosecution's evidence.
  - c. An opening statement should tell the jury and the court what that party intends to prove and should explain that party's theory of the case. Arguments are improper in opening statements.
9. Closing Arguments
  - a. Each side will have five minutes for closing arguments. Plaintiff/Prosecution may reserve time for rebuttal to be subtracted from their overall allotted for their closing argument.
  - b. Closing argument should be directed at persuading the jury to render a decision for that attorney's side, relying on argument and the testimony of the witnesses or admitted exhibit. (Judges will be reminded here to vote on the students' performances rather than the merits of the case.)
  - c. It is improper for a closing argument to:
    - i. refer to facts where there was no evidence of them;
    - ii. state a personal opinion as to the credibility of a witness; or
    - iii. present arguments designed to inflame passion or prejudice.

## **G. Witnesses Procedures**

1. Witnesses may not refer to notes when testifying. Witnesses may not be recalled.
2. Absolutely no props or costumes are permitted unless authorized specifically in the case materials. Costuming is defined as hairstyles, clothing, accessories (such as glasses), and make-up which are case-specific. For virtual events, this includes backgrounds. No staging of a background should occur as it violates the intent of the props and costumes prohibition.
3. Students may otherwise develop character through body language, voice, diction & pronunciation, and their performance. Appropriation or otherwise offensive language and/or cultural displays are prohibited.

4. Should a team have concerns about a performance, they should raise the question during the trial to the Judge. Judges have discretion to per Section IX (9) should a team raise a concern.
5. In any case, judges should score a witness based on their convincing and credible performance.
6. It is stipulated that all witness statements are true and accurate copies of a statement that they made and signed under oath.
7. The statement may be used to impeach the witness where appropriate, but is not itself admissible into evidence.
8. Each witness is bound by the facts contained in their own witness statement. A witness is not bound by facts contained in other witness statements. A witness may not be cross-examined about facts or information contained in other witness statements.
9. If a witness is non-responsive, the witness may be instructed by the judge to answer “yes” or “no” on a question by question basis. However, a witness is not bound to answer all questions “yes” or “no.”

## **H. Extrapolations**

1. Fair Extrapolations. Minor extrapolations of facts not in the record are allowed, provided they may be reasonably inferred from the case materials and are neutral toward both sides. A fair extrapolation would be background information such as date or place of birth. This would be a minor extrapolation and would be allowed to amplify or humanize the case, assuming those facts are relevant.
2. Unfair Extrapolations. A party may object to testimony on the ground that it is “beyond the scope of the witness statement” or is an “unfair extrapolation” An unfair extrapolation would be one that adds material support to the party who called the witness or weakens the case of the other party.
3. Objection to Extrapolations. When an opposing attorney objects on the basis of unfair extrapolation they shall object by saying Unfair Extrapolation.
4. The Presiding Judge should ask the questioning Attorney if the information presented is in the materials provided. If the Attorney can point it out, it is not unfair extrapolation and the objection should be overruled.
5. If the participant admits that the information is not in the materials provided, or if they cannot point it out, the Presiding Judge should then ask the questioning Attorney if the information they sought is neutral to both sides. (Practice Pointer: If the Attorney is fighting to get the information in, it is probably not neutral to both sides or they wouldn’t be using time to get it in)
6. If the Attorney claims it is neutral to both sides, yet it does not involve something innocuous like a date or place of birth, then the Presiding Judge should sustain the objection since information that is neutral to both sides is not going to help a court decide a case.
7. If the Attorney admits that the information sought is not neutral to both sides, then the objection should be sustained as being unfair extrapolation.
8. If the objection is sustained, the court should strike the improper testimony. Judges must also take account of unfair extrapolation in scoring the witness and opposing counsel.
9. Attorneys should also recognize that unfair extrapolation can also be challenged through cross-examination demonstrating the absence of the extrapolation in the witness’ statement.

10. The decision of the Presiding Judge in ruling on this objection, as with other objections, is final. If the objection is overruled, it may be renewed as to further questions or answers.

## **I. Stipulations**

1. Stipulations are agreements treated as true between parties. All stipulations are provided in the case materials.
2. Stipulations are to be considered part of the record and already admitted into evidence. Stipulations, charges, or the jury instructions will not be read into the record.

## **X. Exhibits**

### **A. Presentation of Exhibits**

1. The only exhibits permitted are those provided in the case materials.
2. No other exhibits or demonstrative evidence may be offered.
3. Only witness statements made in the current trial are evidence for jury consideration. The affidavits provided by the case materials cannot be entered as evidence.
4. Publishing to the jury is not permitted. The only documents that teams may present to the court are the individual exhibits as provided in the case materials as they are introduced into evidence and the team roster form.
5. Exhibit notebooks are not to be provided to the judges. Exhibits are to be shown to opposing counsel and handed to the Presiding Judge.

### **B. Markings / Manipulation of Exhibits**

1. All evidence will be pre-marked as exhibits.
2. No alterations or enlargements of exhibits are permitted
3. No exhibits may be marked before the start of the trial if intended to to be used during trial.
4. In trial, attorneys may highlight, underline, and/or mark-up exhibits only during an attorney's active questioning of a witness.

### **C. Procedure for Introduction of Exhibits - In-Person**

1. As an example, the following steps effectively introduce exhibits:
  - a. Ask for permission to approach the bench. Show the Presiding Judge the marked exhibit. "Your honor, may I approach the bench to show you what has been marked as Exhibit \_\_?"
  - b. Show the exhibit to opposing counsel.
  - c. Ask for permission to approach the witness. Give the exhibit to the witness.
  - d. A variation of: "I now hand you what has been marked as Exhibit No. \_\_ for identification."
  - e. Ask the witness to identify the exhibit. "Would you identify it please?"
  - f. Witness answers with identification.
  - g. Attorney then asks questions to lay the foundation for the witness's knowledge of the evidence they are aiming to enter into evidence.
  - h. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. \_\_ into evidence at this time. The authenticity of this exhibit has been stipulated."
  - i. Court: "Is there objection?" (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
  - j. Opposing Counsel: "No, your Honor," or "Yes, your Honor." If the response is "yes," the objection will be stated on the record. Court: "Is there any response to the objection?"

k. Court: "Exhibit No. \_\_ is/is not admitted."

#### **D. Procedure for Introduction of Exhibits - Virtual**

1. During a virtual competition, the procedure outlined above shall be followed, except that:
2. When an exhibit is shown to a witness, a member of the examining attorney's team shall make that document available to all participants via "screen sharing" or similar technology.
3. The member of the team responsible for posting the exhibit must be a team member competing in the round or the timekeeper for the round.
4. Exhibits or other documents posted in this manner will be deemed not to have been shown to the jury unless they are admitted into evidence and formally published to the jury.
5. All witnesses shall have all case materials available and in their possession during their testimony but may only refer to them when prompted by an examining attorney.
6. Attorneys will identify the exhibit they wish to show the witness and request the Court's permission for the witness to view it.
7. Attorneys will not be required to confirm that they have shown the exhibit to the opposing counsel.
8. The attorney will say words to the effect of "I now show you what has been marked for identification as Exhibit No. \_\_. Would you identify it please?" Witness should answer to identify only.
9. Teams may use technology to annotate exhibits electronically only to the extent that marking physical exhibits would have been permitted by in-person as per the Marking rules above. On Zoom, attorneys may mark electronic evidence when in screen sharing mode using the annotation feature.

### **XI. Completion of Trial**

#### **A. Scoring**

1. MCCE has adopted and adapted the Michigan Supreme Court Administrative [Order No. 2020-23 - Professionalism Principles](#) ("Professionalism Principles") as the guiding principles of what makes a high performing participant in MCCE Mock Trial. For information on judging procedures, criteria, and more, see [Sample Performance Rating Sheet](#).
2. Each judge will have their own score sheet.
3. The score sheets are divided into 4 segments: opening statements, case in chief, closing arguments, and overall score. Judges are encouraged to document initial thoughts on scoring at the end of each segment.

4. After closing arguments, the Judges will retire to chambers to deliberate. Deliberation should take no longer than ten minutes.
5. See the below section regarding Star Awards
6. Each judge must complete their own rating sheet. Judges must add their scores to make sure that the team with the most points is their selected “winner.”
7. The Judges will give the completed sheets to the Court Officer who will double-check the scores ***in the presence of the judges.***
8. Balloting. MCCE will utilize online systems to track ballot scores. Devices may be made available to facilitate the entering of scores.
9. The Court Officer will remain with judges until their ballot has been submitted and confirmed by tabroom at the end of each trial.

#### **B. Number of Judges.**

1. For Regional Events.
  - a. MCCE strives for 4 volunteer judges in each courtroom (1 presiding, 3 scoring).
  - b. When there are 4 judges present, the Presiding Judge score sheet will be collected to provide a back up score in case an issue arises with one of the three scoring judges ballots.
  - c. If there are three judges (1 Presiding and 2 Scoring), the Presiding Judge’s will be used to calculate the results of the trial.
  - d. If there are two judges (1 Presiding and 1 Scoring), those two scores will be averaged to make a “third” judges ballot.
2. At the State Finals, the above criteria will be followed. There is additional potential to expand the judging panels to include more than the above judges.
3. Volunteers depending, there will also be a courtroom officer assigned to each room.
4. Tournament staff will make every effort to ensure that teams will not present the same side of the case before any judge to whom that team presented its case in an earlier round. However, should this occur, it will not be considered a violation of the Tournament Rules.

#### **C. Round Winner Determination**

1. Winners of each individual trial round at the regional tournaments and state finals are determined by the number of ballots earned by a team in that round.
2. Ballot wills are determined by the total points assigned by the scoring judge.
  - a. Points are awarded in whole numbers only.
  - b. The team with the higher number of total points will earn the ballot (“win”).
  - c. A team earning a majority of ballots will win the round.
3. Judges are instructed that no ballot may result in a tie score.
4. Points Calculated in Bye/Forfeit
  - a. Teams that win because of a bye or forfeit, will be awarded points equal to the average of their own earned points in the other trial(s) of that tournament. Averages will be rounded to the nearest whole number.
  - b. A bye occurs in one of two ways.
    - i. Odd number of teams registered meaning one team will not compete during each round
    - ii. Forfeiture during the course of the tournament.

- c. In the event of a circumstance resulting in an odd number of competing teams, the following procedure will apply:
  - i. Drawing a bye. The team drawing the “bye” will, by default, receive a win and three ballots for that round.
  - ii. For the purpose of determining placing at Regional rounds and for determining rankings at the State Finals, the team drawing the “bye” will be given points equal to the average of its own points earned in its other trials

#### **D. Errors**

1. In the event of a scoring error, MCCE will do what it can to make the situation right. For instance, if a team is announced as advancing that actually didn’t due to an MCCE error, the team announced AND the team that perhaps should have advanced will both be permitted to advance to states.
2. MCCE will also investigate its own practices in light of an error and make necessary recommendations and adjustments.

#### **E. Star Attorney and Star Witness Awards**

1. These forms are completed by teams during the judge deliberation period.
2. Students will gather within their team to choose one student to acknowledge as their choice for outstanding attorney and their choice for outstanding witness from the opposing team.
3. Students are to decide and proceed with awarding their star awards to the other team, prior to the judges giving comments.
4. These awards are peer to peer recognition and will not impact judges or tabulation room decisions.
5. For virtual adaptations, schools will still announce their chosen attorney and witness and the certificates may be printed by each school to fill in the details.

#### **F. Results**

1. No results, points, or prevailing team announcements should be made during any one specific trial.
2. After the final round of the day/competition is complete, the identities of the advancing teams will be announced publicly.
3. Within two weeks after each tournament, coaches will receive Performance Summary Sheets for their school. Coaches may also receive electronic feedback on ballots. MCCE may not review all comments prior to distribution; as such coaches are encouraged to read comments prior to passing along to students.

#### **G. Deliberation and Judges’ Comments**

1. After the judges have completed the Performance Rating Sheets and have discussed the comments they will make in chambers, Judges return to the courtroom where the Presiding Judge will reconvene the proceedings.
2. The judges will not announce the winning team.
3. The judges are encouraged to make brief, affirming, and constructive comments regarding the performances of the attorneys and witnesses.
4. Competition rounds will be limited to 2.5 hours, including Judges’ comments. Judges’ comments will be limited to 15 minutes (5 minutes per judge), whether there is time remaining in the 2.5 hour round or not. Timekeepers may time judges comments and coordinate with Court Officers. Court Officers are responsible for keeping an eye on the time and making sure that judges do not exceed their allotted time.
5. The length of a trial may require the exclusion of the comment session.



## **XII. Companion Program Section**

### **A. Purposes**

1. The Courtroom Companion Programs provide more opportunities for students to see themselves as part of the legal community. Each student is encouraged to add their own unique talents to be the ones who capture the visual and human drama of the courtroom.
2. The illustrators and journalists and the ones creating the first draft of history and highlighting that behind each and every court case, are human beings facing adversity and seeking remedy and justice through the U.S. court system. Thank you to the illustrators and journalists who are capturing the humanity found within the case.

### **B. Courtroom Illustration and Artistry**

1. Students are encouraged to bring their talents to capture a visual representation of the trial. Students will draw, from scratch, an illustration from an assigned trial.
2. Full Rules can be found [here](#) or <https://bit.ly/2023MCCEArt>.
3. The student who wins the Michigan Mock Trial series, also can compete at Nationals as part of #TeamMichigan.

### **C. Courtroom Reporting and Journalism**

1. Students are encouraged to bring their reporting and journalism skills to the mock trials in order to capture a record of the trials. Students may use the case materials to prepare for the story, however the story itself must be created from scratch upon the start of a trial.
2. Full Rules can be found [here](#) or <https://bit.ly/2023MCCEJournalist>
3. The student who wins the Michigan Mock Trial series, also can compete at Nationals as part of #TeamMichigan.

## **XIII. Rules of Evidence**

### **A. Introduction**

1. 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.
2. 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.
3. The burden is on the mock trial team to know the 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.
4. For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the [Federal Rules of Evidence](#) and its numbering system. Where rule numbers or letters are skipped, those rules were not deemed applicable to Michigan MCCE mock trial procedures.
5. Text in *italics* represent simplified or modified language.

6. Not all judges will interpret the Rules of Evidence (or procedure) the same way, and mock trial attorneys should be prepared to respectfully point out specific rules (quoting, if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate.
7. Organization of the Articles and Rules. (Reference: <https://www.rulesofevidence.org>)
  - a. Articles serve as major divisions in content
  - b. Rules fall under each article.
  - c. In objection, an attorney would call out the Article title (ex. O"Objection Relevance")
  - d. During the objection when asked by the judge to explain or defend the objection, the attorney should consider citing the rule (title) and/or the article number.

## **B. Michigan High School Mock Trial Rules of Evidence**

### **ARTICLE I. GENERAL PROVISIONS**

#### **Rule 101. Scope**

*These Rules of Evidence govern the trial proceedings of the Michigan High School Mock Trial Tournament.*

#### **Rule 102. Purpose and Construction**

*These Rules are intended to secure fairness in administration of the trials, eliminate unjust delay, and promote the laws of evidence so that the truth may be ascertained.*

### **ARTICLE II. JUDICIAL NOTICE**

- Not Applicable -

### **ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS**

- Not Applicable -

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

#### **Rule 401. Definition of "Relevant Evidence"**

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

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

All relevant evidence is admissible, except as otherwise provided by these Rules. Evidence which is not relevant is not admissible.

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

#### **Rule 404. Character Evidence Not Admissible To Prove Conduct; Exceptions; Other Crimes**

(a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:



(1) Character of accused - In a criminal case, evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404 (a)(2), evidence of the same trait of character of the accused offered by the prosecution;

(2) Character of alleged victim - In a criminal case, and subject to the limitations imposed by Rule 412, evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the first aggressor;

(3) Character of witness - Evidence of the character of a witness, as provided in Rules 607, 608 and 609.

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

#### **Rule 405. Methods of Proving Character**

(a) Reputation or opinion. - In all cases where evidence of character or a character trait is admissible, proof may be made by testimony as to reputation or in the form of an opinion. On cross-examination, questions may be asked regarding relevant, specific conduct.

(b) Specific instances of conduct. - In cases where character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

#### **Rule 406. Habit, Routine Practice**

Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization, on a particular occasion, was in conformity with the habit or routine practice.

#### **Rule 407. Subsequent Remedial Measures**

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

#### **Rule 408. Compromise and Offers to Compromise**

(a) Prohibited uses. Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:

(1) furnishing or offering or promising to furnish--or accepting or offering or promising to accept--a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or agency in the exercise of regulatory, investigative, or enforcement authority.

(b) Permitted uses. This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness's bias or prejudice; negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or prosecution.

**Rule 409. Payment of Medical or Similar Expenses**

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

**Rule 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements**

Except as otherwise provided in this Rule, evidence of the following is not, in any civil or criminal proceeding, admissible against a defendant who made the plea or was a participant in the plea discussions:

(1) a plea of guilty which was later withdrawn;

(2) a plea of *nolo contendere*;

(3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state proceeding regarding either of the foregoing pleas; or

(4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which does not result in a plea of guilty or which results in a plea of guilty which is later withdrawn.

However, such a statement is admissible (1) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in fairness, be considered with it, or (2) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

**Rule 411. Liability Insurance (*civil case only*)**

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

**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 not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses.

### **Rule 607. Who May Impeach**

The credibility of a witness may be attacked by any party, including the party calling the witness.

### **Rule 608. Evidence of Character and Conduct of Witness**

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

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' character for truthfulness, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters that relate only to character for truthfulness.

### **Rule 609. Impeachment by Evidence of Conviction of Crime**

- (a) **General rule.** For the purpose of attacking the character for truthfulness of a witness,
- (1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be

admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted regardless of the punishment, if it readily can be determined that establishing the elements of the crime required proof or admission of an act of dishonesty or false statement by the witness.

(b) **Time limit.** Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) **Effect of pardon, annulment, or certificate of rehabilitation.** Evidence of a conviction is not admissible under this rule if (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime that was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(d) **Juvenile adjudication.** Evidence of juvenile adjudication is generally not admissible under this rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

(e) - Not Applicable -

#### **Rule 610. Religious Beliefs or Opinions**

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

#### **Rule 611. Mode and Order of Interrogation and Presentation**

(a) **Control by Court.** - The Court shall exercise reasonable control over questioning of witnesses and presenting evidence so as to:

1. make the interrogation and presentation effective for ascertaining the truth,
2. avoid needless consumption of time, and
3. protect witnesses from harassment or undue embarrassment.

(b) **Scope of cross examination.** - *The scope of the cross examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those*

*facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.*

(c) **Leading questions.** - Leading questions should not be used on direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

(d) **Redirect/Re-cross.** - *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 or re-cross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.*

#### **Rule 612. Writing Used to Refresh 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. Prior Statements of Witnesses**

(a) **Examining Witness Concerning Prior Statement.** In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) **Extrinsic Evidence of Prior Inconsistent Statement of Witness.** Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

### **ARTICLE VII. OPINIONS AND EXPERT TESTIMONY**

#### **Rule 701. Opinion Testimony by Lay Witness**

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

#### **Rule 702. Testimony by Experts**

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 thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient

facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

**Rule 703. Bases of Opinion Testimony by Experts**

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect.

**Rule 704. Opinion on Ultimate Issue**

(a) Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

(b) No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

**Rule 705. Disclosure of Facts or Data Underlying Expert Opinion**

The expert may testify in terms of opinion or inference and give reasons therefore without first testifying to the underlying facts or data, unless the Court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross examination.

**ARTICLE VIII. HEARSAY**

**Rule 801. Definitions**

The following definitions apply under this article:

(a) **Statement.** - A "statement" is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) **Declarant.** - A "declarant" is a person who makes a statement.

(c) **Hearsay.** - "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if--

(1) **Prior statement by witness.** The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or



implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or (2) **Admission by party-opponent.** The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy. The contents of the statement shall be considered but are not alone sufficient to establish the declarant's authority under subdivision (C), the agency or employment relationship and scope thereof under subdivision (D), or the existence of the conspiracy and the participation therein of the declarant and the party against whom the statement is offered under subdivision (E).

#### **Rule 802. Hearsay Rule**

Hearsay is not admissible except as provided by these Rules.

#### **Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial**

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

- (1) **Present sense impression.** - A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
- (2) **Excited utterance.** - A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
- (3) **Then existing mental, emotional, or physical conditions.** - A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.
- (4) **Statements for purposes of medical diagnosis or treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.
- (5) **Recorded recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) **Records of regularly conducted activity.** - A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term “business” as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(18) **Learned treatises.** - To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(21) **Reputation as to character.** - Reputation of a person’s character among associates or in the community.

(22) **Judgment of previous conviction.** - Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

#### **Rule 804. Hearsay Exceptions, Declarant Unavailable**

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

- (1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant’s statement; or
- (2) persists in refusing to testify concerning the subject matter of the declarant’s statement despite an order of the court to do so; or
- (3) testifies to a lack of memory of the subject matter of the declarant’s statement; or
- (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
- (5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant’s attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant’s attendance or testimony) by process or other reasonable means. A Declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

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



(1) **Former testimony.** Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

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

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

(4) **Statement of personal or family history.** (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as likely to have accurate information concerning the matter declared.

(5) **Forfeiture by wrongdoing.** A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

**Rule 805. Hearsay within Hearsay**

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

**ARTICLE IX. AUTHENTICATION AND IDENTIFICATION –**

- Not Applicable -

**ARTICLE X. CONTENTS OF WRITING, RECORDINGS AND PHOTOGRAPHS –**

- Not Applicable -

**ARTICLE XI. OTHER –**

- Not Applicable -