2017 Collin County 8th Grade Mock Trial Rules Packet

PREAMBLE:

In American trials, elaborate rules are used to regulate the admission of proof. These rules are designed to ensure that both parties receive a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the evidence must be excluded from the record of the trial. Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this mock trial competition, the rules have been modified and simplified below.

SIMPLIFIED RULES OF EVIDENCE

I. WITNESS EXAMINATION

A. Limitations on Questions and Answers:

1. Leading Question

Witnesses may not be asked leading questions by the attorney who calls them (on direct examination). A leading question is one that suggests to the witness the answer desired, and often suggests a yes or no answer.

Example: Mr. Jones, do you recall what you were doing on the evening of Tuesday, March 25? (direct question)

Example: Officer Smith, didn't the suspect reach into his pocket for a metallic-looking object just before you fired your service revolver? (leading question)

2. Narrative answer

Witnesses may not be asked a question which calls for a narrative answer. A good rule of thumb is that the witness should be able to answer the question in one sentence. Note: Some latitude will be allowed on background questions.

Example: Ms. Green, what qualifications do you possess as a social worker?

Answer: I received a bachelor's and master's degree from the University of Texoma, and performed a summer internship prior to my employment by Children's Protective Services. I attend yearly seminars in children's issues and I also read professional journals and meet with experts from other fields on a

regular basis. (This is permissible.)

Example: Ms. Green, please describe what you saw when you entered Leta Spillers' apartment.

Answer: I saw junk food all over the apartment and I found Johnny unconscious near the radiator. I called a neighbor and asked her if she knew where Leta was. She said that Leta often left Johnny unattended and that he usually helped himself to snacks when he was hungry. Then Leta pulled up with a friend and started yelling at me to get out of her house. I told her Johnny was unconscious and she didn't seem to care.

(This question was permissible but the witness has gone much too far in her answer. She should confine her answer to stating her observations. Then the attorney should follow up with another question, e.g., "Did you then call for help?" or "What happened next?")

3. Assuming facts not in evidence.

Attorneys must lay a proper foundation for questions, and a question may not assume any fact unless that fact has already been introduced into evidence.

Example: Mr. Hudson, were you afraid that your ex-wife would abuse Johnny again if she had an unsupervised visit?

Objection, Your Honor, there is no evidence that Mrs. Hudson abused Johnny.

How to lay a proper foundation:

Q. Mr. Hudson, was your ex-wife a good caretaker of Johnny?
A. No.
Q. In what way?
A. She often drank when he was in her care, and she left marks or bruises on him several times.
Q. Were you afraid that she might abuse him again?

4. Counsel testifying

Attorneys may not give testimony or make statements during questioning. All evidence must be developed in question-and-answer form, with the witnesses and not the attorneys telling the story.

Example: Ms. Griner, the Order of Custody found that Mrs. Hudson had seriously hurt

Johnny on several occasions when he was in her care. (Counsel is testifying.)

Example: Ms. Griner, you didn't state in your affidavit that June Hudson was going to her mother's house with Johnny instead of to the zoo. (Counsel is testifying.)

How to conduct cross-examination without testifying:

Q. Ms. Gainer, were you aware that the Order of Custody found that June Hudson was not a fit custodian for Johnny?

Q. Isn't it true that you never mentioned that fact in your affidavit?

Q. Didn't you state in your affidavit that men don't know how to raise children?

Q. You don't like social workers very much, do you, Ms. Gainer?

5. Hearsay or lack of personal knowledge

Generally, a witness may not testify to a statement made out of court by a person who is not present to testify. This includes written statements such as letters and police reports. There are some important exceptions to this rule.

Example: Ms. Green, do you know what caused Jerry's coma?

Answer: The nurse said he had swallowed some heart medicine and some apricot brandy.

Unless the nurse is testifying in court, this evidence may not be introduced. This witness may not say that Jerry swallowed heart medicine and apricot brandy unless she has personal knowledge of that fact (e. g., she found heart pills in his mouth and could identify them, and she could smell apricot brandy on his breath).

Hearsay exceptions:

State of mind: A witness may testify to another person's statement to explain the witness' state of mind.

Example: Why were you driving so fast, Mr. Thomas?

Answer: My wife had just telephoned to say she was in labor and I was rushing home to take her to the hospital.

Admission against interest: If a person makes an admission that would be against that person's interest a witness may testify to that statement. This is because most persons are unlikely to make

statements against their interest unless they are true.

Example: If Tanya Harding told her training coach that she had transferred $5,000 to Shawn Eckart's bank account on January 5, and another $35,000 on January 10, her coach could testify to that statement. The reason for this exception is that most persons are unlikely to make statements against their interest unless they are true.

Expert opinion: Generally, an expert witness may testify to hearsay statements that form the basis of his opinion.

Example: A psychologist testifying about a parent's fitness could testify to statements made by family members or acquaintances of the parent to explain his or her opinion.

6. Opinion or speculation:

Generally, lay witnesses (persons who are not experts) may not be asked to give opinions or to speculate about what may have occurred or what may occur in the future. An example would be asking a witness why they think another person acted in a certain way, or asking what the witness thinks would have happened if some fact or circumstance had been different.

7. Relevancy

Generally, only relevant testimony and evidence may be presented. Relevant evidence is that which tends to prove a fact which is important, to the case, or to make that fact more probable. Evidence that has no direct bearing on the issues of the case or with making the issues clearer is not allowed. Even relevant evidence may be excluded if it is overly prejudicial, confuses the issues, or duplicates other evidence already introduced.

Example: In a DWI trial, evidence that the defendant beat his wife or had forged a check would be irrelevant to whether or not he was driving while intoxicated. Evidence that a person is religions or well-liked is not relevant unless that person's character is at issue.

8. Improper Character Testimony

Evidence about the character of a party may not be introduced unless the person's character is an issue in the case. In a criminal trial, character will usually be relevant in the punishment phase but not in the guilt phase: having a bad character does not tend to prove that an individual committed a crime. Past bad conduct may not be used in a criminal case to prove guilt.

Example: A party's violent temper would be an issue in a custody case, but not in a criminal trial for theft.

9. Exceeding the Scope

On direct examination, attorneys may ask permissible questions about any matter relating to the case. On cross-examination, the opposing side may also ask questions about any relevant matters, or about matters relating to the credibility of the witness.

On redirect examination, the scope of questioning is limited to those matters brought out in cross-examination. Redirect may not be used to introduce new or additional evidence not covered in the first direct examination.

On re-cross, the scope is limited to those matters brought out in redirect examination.

10. Non-Responsive Answers

Occasionally a hostile witness, not wishing to make an admission, will ignore the answer to the question and respond by giving a long explanation or narrative to a yes-or-no question, or by offering information not asked for. The attorney who asked the question may object to the answer if it is non-responsive (does not answer the question). If the witness continues being uncooperative, the attorney may request the Court to direct the witness to answer the question.

On direct examination, a witness may also volunteer information or give a non-responsive answer. The opposing attorney may object to the answer as non-responsive.

Whenever an objection for non-responsiveness is sustained, you should ask that the answer be stricken from the record.

11. Badgering the Witness or Being Argumentative

In cross-examination, there is a fine line between laying a trap for the witness by asking leading questions, and arguing with the witness. If the questioning becomes an inquisition, or the attorney is abusive, it may be considered badgering the witness. You may not argue with the witness' answer. If it contradicts an earlier statement, you may ask about the contradictory statement, but do not argue with the witness about it. Do not repeatedly ask the same question if the witness answers the question in a responsive manner but doesn't give you the answer you are looking for. Do not make statements or arguments directed at the witness.

B. *Techniques for Examining Witnesses*

1. Impeaching a Witness

On cross-examination, the attorney may want to show the Court that a witness is not credible (should not be believed). This may be done by proving that a witness is biased, has contradicted previous statements, or has a bad reputation for truthfulness.

If the witness has contradicted a statement in the witness' affidavit, the attorney should ask about the previous statement and point out the contradiction between the affidavit and the in-court testimony.

Example: Mr. Day, you just testified that you do not drink at all in front of Jerry, correct?
A. Yes.

Q. Mr. Day, you made a written statement in this case several months ago, didn't you?
A. Yes.

Q. Now, Mr. Day, in your affidavit you stated that you have one beer after work and one beer with dinner, didn't you?
A. Well . . . yes, I guess I said that.

Q. Does that mean that you don't eat dinner as a family?
A. Oh no, we always eat dinner together.

Q. So, Mr. Day, were you lying in your affidavit or are you lying now?

2. Effective Cross-Examination

While leading questions are not allowed on direct examination, it is a good idea to ask only leading questions on cross-examination. Avoid asking open-ended questions (especially questions that begin with "why" or "how") of an adverse witness, because they will use the opportunity to explain their testimony in a more favorable manner. A good witness may even become more believable after cross-examination if the opposing counsel is not careful.

It is not necessary, on cross-examination, to attack every point made on direct examination. Choose those weaknesses you, want to emphasize, and ask a series of leading questions that you know will eventually produce the damaging admission you are looking for.

3. Using Redirect Examination

The purpose of redirect examination is to "rehabilitate" a witness after a damaging cross-

examination. If the opposing attorney has obtained damaging admissions from a witness, use the redirect questioning to allow the witness to go into more detail and explain those matters, or qualify the answers given on cross-examination.

Example: Mr. Day, how long ago did you give your affidavit?
A. It was about 18 months ago.

Q. Have you changed your drinking habits since then?
A. Yes. Six months ago, I stopped drinking completely.

Your witnesses should be prepared with a credible story to explain away the damaging parts of their statements, consistent with their affidavits. The other side will not know the rest of their story until you bring it out on redirect.

II. INTRODUCTION OF EXHIBITS

All testimony given in a trial is "in evidence." Statements contained in the witnesses' affidavits are not in evidence until the witness makes the statement again in open court. Evidence may also consist of physical objects or documents such as business records, diagrams, drawings, or letters or other correspondence. The affidavits of the witnesses may be used for impeachment without offering them into evidence. Documents and exhibits may be introduced into evidence as follows:

1. Mark the exhibit (e. g. State's Exhibit 1 or Defendant's Exhibit 1) or request that the exhibit be marked by the court reporter.

2. Request permission to approach the witness. Then show the witness the exhibit and ask the witness to identify it.

3. Ask the witness any relevant questions pertaining to that piece of evidence only for the purpose of fully identifying the exhibit.

4. Show the exhibit (or a copy) to opposing counsel, so the opposing attorney can review it and make any objections before the judge makes a ruling.

5. Request that the exhibit be admitted into evidence. ("*Your Honor, at this time I move that State's Exhibit 1 be admitted into evidence")* If the opposing attorney makes an objection, be prepared to respond to the objection by stating why the evidence is admissible.

III. OBJECTIONS

Only, the objections listed below may be used in the Mock Trial Competition. No other objections will be considered by the judge, and teams will be penalized for making objections not on the list.

An attorney can object any time the opposing attorneys have violated the rules of evidence or the rules of the competition. An attorney wishing to object should stand up and do so immediately at the time of the violation. An objection made after a question has been asked and answered may be overruled as untimely.

When an objection is made, the judge will ask the legal grounds for the objection. The attorney is limited to stating briefly the grounds for the objection and may not argue or talk about the evidence. Attorneys who use objection time to testify or comment on the evidence, beyond explaining the reason for the objection, may be penalized.
Attorneys' questions are not considered evidence, but an improper question to which an objection is sustained may contain damaging information that is prejudicial to the jury. In that case, you may request that a question be stricken from the record and the jury instructed to disregard it even though the witness does not answer the question.

After the objection is stated, the judge will wait for a response from the attorney who asked the question. If the judge says nothing, say, "May I respond, Your Honor?" After being given permission to speak, state the legal reason why the evidence should be allowed. Arguing about the evidence is not allowed, but it may be necessary to explain, for example, why a question is relevant or why a question is not hearsay.

The judge will then decide whether a question and answer should be excluded from evidence (objection sustained) or whether the question and answer should be allowed (objection overruled).

If the judge sustains an objection but the witness has already answered the question, you should request that the answer be stricken from the record, and that the jury be instructed to disregard the witness' answer.

List of Trial Objections (mock trial is limited to the following objections):

1. Irrelevant evidence.
2. Leading the witness (only on direct examination).
3. Narrative question or narrative answer.
4. Assuming facts not in evidence.
5. Counsel testifying.

6. Hearsay.

7. Lack of personal knowledge (an indirect hearsay objection).

8. Opinion or speculation (unless the witness is an expert).

9. Improper character evidence or improper impeachment.

10. Beyond scope of cross-examination (on redirect) or beyond scope of redirect (on re-cross).

11. Non-responsive answer.

12. Badgering the witness or argumentative.

13. Question has been asked or answered (usually a variation of badgering the witness).

14. Interference by coach or sponsor or violation of the Mock Trial Rules. (If a rule of the competition has been violated, opposing counsel should stand and object, then be prepared to quote the rule being violated. This includes an objection that the opposing team has substantially altered the facts of the case.)

OTHER MATTERS OF IMPORTANCE

IV. RULES OF CONDUCT

We hope you enjoy Mock Trial this year and follow these rules. We would ask that each student, faculty member and parent remember the following:

1. Mock Trial guests end participants should remember that business is being conducted in the Courthouse. Every effort should be taken to keep voices down and noise levels down.

2. There will be no horse play in the restrooms, elevators or other areas of the courthouse. Running, throwing items or destroying county property is prohibited.

3. Dropping items off the balconies or spitting from the balconies could result in the violator being asked to leave the courthouse.

4. Mock Trial guests and participants must use the elevators which are specifically designated for Mock Trial.

Again, each guest and participant is asked to be on their best behavior, especially between rounds, to assure future use of the Collin County Courthouse for this event.

V. RULES OF THE TRIAL

A. All trials will be governed by these Rules of Trial and the Simplified Rules of Evidence. Other rules shall not be raised in the trial, and teams making objections not within the scope of the Simplified Rules of Evidence may be penalized.

B. The Statement of Facts and any additional stipulations may not be disputed at the trial.

C. Usual rules of courtroom decorum apply to all participants.

D. The applicable law is set forth in the problem.

E. While students may read other cases and materials in preparation for the mock trial they may not use outside materials in the trial, and expert knowledge, outside of the materials provided, may not be offered as evidence or referred to in argument. Students may also conduct research such as looking up terms in a medical dictionary or having a guest speaker visit their school to help them understand the context of the fact situation and the evidence involved in the case.

F. *Exhibits, Diagrams, Etc.:* All documents, statements, photographs, diagrams and other material sent as part of the problem shall be deemed as originals and authenticated documents. Only those exhibits provided in the problem may be used in the trial. Counsel may not edit or otherwise alter the exhibits. Three-dimensional exhibits and models are not permitted unless specifically authorized by the instructions provided in the problem. Exhibits may be enlarged, but not changed or modified. Any writing on such aids may only be done by attorneys or witnesses during the trial. Chalkboards and pads of paper, to the extent available, may be used to illustrate on. Teams may be penalized for violations of this rule.

G. All witness statements that are part of the problem must be acknowledged by all parties and witnesses as being the statement, deposition or prior testimony of that witness. Each witness is bound by his or her individual witness statement, but a witness is not bound by facts contained in other witness statements. Witness statements are designed so that witnesses may be either male or female.

H. *Reasonable Inferences - Material Facts.* The witnesses will inevitably be asked questions whose answers go beyond the facts contained in the material distributed. This allows the contest to go beyond a stale rehashing of the given facts, and ensures that there will be unexpected testimony. The practice of going beyond the facts provided should, however, be limited to facts that can be reasonably inferred from the record, and not facts that will

substantively alter the case or the witnesses testimony. Participants and their witnesses are bound by the facts contained in the competition case materials in the presentation of their cases. If a witness testifies to a fact not contained in the case materials, the witness must admit that the fact was not contained in the materials if questioned on the subject; and the witness must admit that the fact was suggested by counsel, if true. Participants may develop testimony as to material facts that are not contained in the competition case materials that are consistent with that witness' statement. Counsel may object to testimony that cannot be reasonably inferred from the given facts by arguing the issue of whether the inference is unreasonable or "beyond the scope of the trial court record." Objecting counsel will need to explain exactly what information is in the record and will need to argue that the inference **substantially alters** the information provided. Judges sustain or overrule the objection based on how far removed the inference is from the facts in the problem; and whether impeachment from the trial materials is possible. If the objection is sustained, objecting counsel can move to strike the testimony. A very good example of an inference that would substantially alter the information would be in the form of a witness that suffers from a physical condition such as blindness, arthritis, or such that he/she would not be physically capable of the actions contained in the statement of facts.

I. Time will be stopped for objections.

J. Judges will be permitted to award extra points for the effectiveness of objections. Counsel are advised, however, to be cautious in making objections. Make only those objections which are necessary to protect your position. Making too many objections and repeatedly interrupting testimony can cost your team points.

K. In each trial, each attorney shall conduct a direct or cross examination of 3 witnesses during the competition, and an either opening or closing argument. Failure to do so can result in an objection by the other side for failure to follow mock trial rules and a loss of points.

L. Each team shall assume and pretend that the case is being tried to a jury unless the Judge asks for you to direct to him/her. The team may have its extra team members sit in the jury box so that they are not presenting argument to an empty jury box. The presiding judge will be the scorer and may score based upon presence before the jury.

M. Team Composition - Each student team shall be composed of two attorneys, six witnesses (3 for each side of the case) and a timekeeper. Each attorney is responsible for: 1) either the opening argument or the closing argument; 2) the direct and/or cross examination of 3 witnesses during each trial. Essentially, each attorney should handle half of each trial.

VI. SCHEDULING:

A. Each team will try each side of the case at least once in the preliminary rounds.

B. Teams must be either in a trial, at lunch, or in the Central Jury Room. Teachers and coaches are asked to allow no students to roam the courthouse.

C. Teams not scheduled for a trial may observe another trial *only if your school's other team is competing in such trial*. Students wishing to observe a trial must enter prior to the commencement of the trial, remain quiet, and remain in the courtroom until the trial is finished.

VII. JUDGING

A. The judges' decision will be final.

B. Judges will be given score sheets that will be tabulated by the Coordinator(s).

C. A winner must be declared in each trial by a minimum of one point. However, the Judges will not inform you of your score at the end of your trial. The Judge may let you know which side of the problem won based on the substance of the case, but not your mathematical score on their score sheet.

D. One best witness and one best lawyer will be chosen in each trial.

VIII. MATCHING OF TEAMS IN COMPETITION

A. Preliminary rounds will be determined by the coordinator with the attempt being made to not pair the same school district against each other in the first two rounds.

B. All teams will participate in at least 3 trials. At the end of the third round, 4 teams will advance to the semi-final rounds based on scores and win/loss record. Because of the number of teams involved, there is a possibility that an undefeated team may not advance to the semi-finals.

C. Seeding of teams in the quarterfinal rounds will be determined by random draw.

D. Efforts will be made to make sure that teams from the same school do not compete against each other in the first two rounds.

IX. TEAMS UNABLE TO COMPETE

If a team is unable to continue in the competition for any reason, that team may be replaced by the next eligible team. In the event an unforeseen emergency, substitutions may be allowed or a round may be postponed at the discretion of the Mock Trial Officials, whose decision will be final. Any teachers or coaches who become aware of a situation likely to prevent their team from participating or continuing in the competition are requested to bring that matter to the immediate attention of the Mock Trial Officials.

X. TIME FRAME

Time is allotted and shall be used as follows:

Prosecution Opening Statement:	4 minutes
Defendant's Opening Statement:	4 minutes
Prosecution's Direct Examination each witness:	7 minutes
Defendant's Cross Examination:	6 minutes
Prosecution's Re-Direct (optional):	3 minutes
Defendant's Re-Cross (optional):	3 minutes
Defendant's Direct Examination (each):	7 minutes
Prosecution's Cross Examination:	6 minutes
Defendant's Re-Direct (optional):	3 minutes
Prosecution's Re-Direct (optional):	3 minutes
Prosecution's Closing Argument:	5 (or 4) min.
Defendant's Closing Argument:	5 minutes
Prosecution's Rebuttal (if reserved):	1 minute

Each team shall supply a time keeper. All time stops at the moment an objection is made until the objection is ruled upon by the court. In the event of a timing dispute, it is within the court's discretion to adjust the time.