# RULES OF THE 2010 TENNESSEE HIGH SCHOOL MOCK TRIAL COMPETITION
## EFFECTIVE NOVEMBER 17, 2009

The Tennessee High School Mock Trial Competition is governed by the Rules of the Competition, the Rules of Procedure and the Tennessee High School Mock Trial Competition Rules of Evidence. Any clarification of these rules or case materials will be issued in writing to all participating teams by the Chair of the Mock Trial Committee. Any amendments to these rules will be made by the Mock Trial Committee with approval from the Mock Trial Long Range Planning Committee. The Committee has attempted to underline all substantive changes to these rules for 2010; however, teams should review all rules to ensure compliance.

No local or district competition may alter the language of these rules. However, District Competitions may be run differently. Therefore, you should consult with your district coordinator as to the procedure for your local competition.

Some Rules of Evidence may not be relevant to the particular problem and may be disregarded.

All teams are responsible for the conduct of persons associated with their teams throughout the mock trial event. Your team may be penalized for the conduct of persons associated with your team (i.e. guests, coaches, alternates), whether or not they are actual team members. The Mock Trial Committee feels it is important that teams, including their guests and coaches, have good sportsmanship. Therefore, we again will recognize one team with a Sportsmanship Award at the state competition.

TO ADD COMPLEXITY FOR THE STATE COMPETITION, WE MAY RELEASE ADDITIONAL MATERIAL ON MONDAY, MARCH 1, 2010 AT NOON CENTRAL TIME. PREVAILING TEAMS FROM EACH DISTRICT SHOULD ACQUIRE AND PREPARE ANY ADDITIONAL MATERIAL BETWEEN DISTRICT AND STATE.

## RULES OF THE COMPETITION

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# I. RULES OF THE COMPETITION

## A. THE PROBLEM

**Rule 1. Rules**

All trials will be governed by the Rules of the Tennessee High School Mock Trial Competition and the Tennessee High School Mock Trial Competition Rules of Evidence.

Questions or interpretations of these rules are within the discretion of the Tennessee Bar Association Young Lawyers Division Mock Trial Competition Chair and Committee ("Mock Trial Chair and Committee"). Any amendments to these rules will be made by the Mock Trial Committee with approval from the Mock Trial Long Range Planning Committee.

**Rule 2. The Problem**

The problem will be based upon a fact pattern which may contain any or all of the following: statement of facts, pleadings, indictment, stipulations, witness statements / affidavits, jury charges, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

**Rule 3. Witness Bound by Statements**

Each witness is bound by the facts contained in his / her own witness statement, the statement of facts, if present, and / or any necessary documentation relevant to his / her testimony.

Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 4, outside the scope of the problem.

If, in cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit and does not materially affect the witness' testimony.

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

**Rule 4. Unfair Extrapolation**

Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. A fair extrapolation is one that is neutral.

Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation.

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

Attorneys for the opposing team may refer to Rule 4 in a special objection, such as "unfair extrapolation" or "This information is beyond the scope of the statement of facts."

Possible rulings by a judge include:

1. No extrapolation has occurred;
2. An unfair extrapolation has occurred;
3. The extrapolation was fair; or
4. Ruling is taken under advisement.

The decision of the judge regarding extrapolations or evidentiary matters is final.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings.

**Rule 5. Gender of Witnesses**

Any student may portray the role of any witness of either gender.

**Rule 6. Voir Dire**

Voir dire examination of a witness is not permitted.

## B. THE TRIAL

**Rule 7. District Composition**

Districts with between four (4) and eleven (11) teams actually competing during the district competition will be permitted to qualify one (1) team to the state competition; districts with between twelve (12) and twenty-three (23) teams actually competing in the district competition will be permitted to quality two (2) teams to the state competition; and districts with twenty-four (24) or more teams actually competing during the district competition will be permitted to send three (3) teams to the state competition. A district with under four (4) teams competing in the district competition will be required to compete with a neighboring district. The deadline for determining the final number of teams expected to compete in the district competition shall be February 1, 2010. District Coordinators shall certify the number and identity of the teams registered to compete in the district competition no later than February 1, 2010. Certification shall be done using the attached form at Appendix A. Please fax the form to the Mock Trial Committee Chair at the following number: 615.259.1389. The certification will be used to make decisions in accordance with Rule 7. If at any time after February 1, 2010 the number of teams competing changes so as to change the number of teams qualifying to attend the state competition, a ruling shall be made, at the exclusive and sole discretion of the Mock Trial Chair, as to whether to allow that district competition to proceed or to fold that district competition into a neighboring district. For schools with more than one team, only two (2) teams may be considered in the calculation of the number of teams qualifying for the state competition.

District competitions must be concluded on or before February 28, 2010. Mock Trial District Coordinators are listed at www.tba.org/mocktrial. The Mock Trial Districts are organized as follows:

**District 1**
Shelby County

**District 2**
Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, McNairy, Madison, Obion, Tipton and Weakley counties

**District 3**
Bedford, Coffee, Franklin, Giles, Grundy, Lawrence, Lincoln, Maury, Moore and Wayne counties

**District 4**
Cannon, Hickman, Lewis, Marshall, Perry, Rutherford and Williamson counties

**District 5**
Davidson County

**District 6**
Cheatham, Dickson, Houston, Humphreys, Montgomery, Robertson, Stewart and Sumner counties
*HISTORICALLY, DISTRICT 6 HAS BEEN DIVIDED INTO A WESTERN AND EASTERN DIVISION, WITH THE TWO DIVISIONS COMPETING IN A RUN-OFF TO DETERMINE THE TEAM ADVANCING TO STATE. HOWEVER, DUE TO THE DECLINE IN PARTICIPATION OF THE WESTERN DISTRICT, PLEASE NOTE THAT ALL TEAMS IN DISTRICT 6 WILL COMPETE IN A SINGLE COMPETITION IN SUMNER COUNTY (EASTERN DIVISION) UNLESS EACH DIVISION OF THE DISTRICT HAS FOUR OR MORE TEAMS REGISTERED BY FEBRUARY 1, 2010.

**District 7**
Bradley, Hamilton, McMinn, Marion, Meigs, Monroe, Polk, Rhea and Sequatchie counties

**District 8**
Bledsoe, Clay, Cumberland, DeKalb, Fentress, Jackson, Macon, Overton, Pickett, Putnam, Smith, Trousdale, Van Buren, Warren, White and Wilson counties

**District 9**
Blount, Cocke, Jefferson, Loudon and Sevier counties

**District 10**
Grainger and Knox counties

**Districts 11 and 12**
Carter, Greene, Hamblen, Hancock, Hawkins, Johnson, Sullivan, Unicoi and Washington counties

**District 13**
Anderson, Campbell, Claiborne, Morgan, Roane, Scott and Union counties

## Rule 8. Team Composition

(a). Teams must have six (6) members and may have up to (but no more than) twelve (12) members assigned to roles representing the Prosecution / Plaintiff and Defense / Defendant sides, along with up to two (2) additional members serving as alternates. For the purpose of providing funding to teams competing in the state competition, the

Tennessee Bar Association will provide four (4) hotel rooms for each team. If additional rooms are needed due to the number of team members or for any other reason, the individuals, the school or local bar association (or some other person or organization) must bear the cost of those additional rooms. In addition, a team may have alternate members, but those members will not be funded to the state competition and can only compete if they are a substitute for a team member. A team at the National Championships may only be comprised of six (6) members and two (2) alternates. Thus, only eight (8) student team members will be funded to the National Championships.

(b). Each team shall have a sponsor from their school or organization for the purpose of contacting teams about important information about the problem or for sending registration materials. Additionally, each team MAY enlist the assistance of one or more coaches. The coaches should be licensed attorneys or law students. The Tennessee High School Mock Trial Competition is organized, hosted and judged by members of the Tennessee Bar Association Young Lawyers Division (YLD). As a public service project of the YLD, there is no charge for teams to compete in the mock trial competition. As an "all volunteer" activity and to preserve a level playing field for all teams participating in the competition, coaches may NOT be compensated by their school or organization for their service. However, it shall not be deemed compensation for a school or organization to reimburse a coach for their out of pocket expenses or mileage for travel to and from practices and the competition. The CLE Commission has not approved credit for attorney coaches.

(c). A team may change the individuals comprising the team between district and state competition provided that the team has a majority of its original members competing from the district competition. In other words, if a team at district was comprised of eight (8) students, then the team at state must have at least five (5) of the original students and up to three (3) of the team members may be replaced with different individuals. Alternates do not count for purposes of this rule.

(d). A team may be formed from two schools situated within a district so long as the two schools, if competing individually, would not have the minimum of six (6) students to form a team. For purposes of this rule, no "recruiting" will be tolerated. Also, because schools must be within a district, this rule does not allow "district shopping." This rule is meant to enhance the ability of start-up programs to participate in the district competition. Home-schooled students may form teams with other home-schooled students under this rule.

(e). From time to time, questions of a team's compliance with the Mock Trial Rules of Competition and qualification to compete arise without adequate time for the district coordinator to make an informed decision concerning eligibility to compete. If a question arises concerning qualification of a team within the twenty-four (24) hours immediately preceding the start of the district competition or after the competition is underway, the district coordinator should make a written record of the concern or complaint and the team shall be allowed to compete through completion with the understanding that the team may later be disqualified. The purpose of this rule is to maintain the competition schedule while allowing the district coordinator to investigate the facts, and, where necessary, contact the Mock Trial Committee concerning an interpretation of the rules prior to disqualification of a team.

**Rule 9. Team Presentation**

A team must present both the Prosecution / Plaintiff and Defense / Defendant sides of the case using six (6) team members for each side. Each side shall consist of three (3) lawyers and three (3) witnesses.

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

Only in the case of an emergency occurring within two hours of a competition round or during a round of competition may a team participate with less than six (6) members. In such a case, a team may continue in the competition by making substitutions to achieve a two attorney / three witness composition, or a team may utilize their alternates, provided such alternates are listed on the team roster submitted prior to the competition. It is the responsibility of a team to notify the Mock Trial Chair or a member of the Committee if an emergency arises.

Final determination of emergency, forfeiture, reduction of points, or advancement, will be made by the Mock Trial Chair and Committee.

**Rule 10. Team Duties**

Each team must call three witnesses and only three witnesses in the event that there are four or more potential witnesses. Witnesses must be called only by their own team and examined by both sides. Witnesses may not be recalled by either side.

Each of the three attorneys must conduct one direct examination and one cross examination, regardless of how many potential witnesses are presented in the case materials, such that no attorney may conduct more than one cross examination. One attorney shall present the opening statement and another will present the closing argument.

Opening Statements must be given by both sides at the beginning of the trial.

THE ATTORNEY WHO WILL EXAMINE A PARTICULAR WITNESS ON DIRECT EXAMINATION IS THE ONLY PERSON WHO MAY MAKE THE OBJECTIONS TO THE OPPOSING ATTORNEY'S QUESTIONS OF THAT WITNESS' CROSS-EXAMINATION, AND THE ATTORNEY WHO WILL CROSS-EXAMINE A WITNESS WILL BE THE ONLY ONE PERMITTED TO MAKE OBJECTIONS DURING THE DIRECT EXAMINATION OF THAT WITNESS.

**Rule 11. Swearing of Witnesses**

The following oath may be used before questioning begins:

"Do you promise that the testimony you are about to give will faithfully and truthfully conform to the facts and rules of the mock trial competition?"

The swearing of witnesses will occur in one of two ways. Either the judge will indicate all witnesses are assumed to be sworn, or the above oath will be conducted by (a) the judge, (b) a bailiff, provided by the Mock Trial Committee, or (c) the examining attorney.

**Rule 12. Trial Sequence and Time Limits**

The trial sequence and time limits are as follows:

1. Opening Statement (4 minutes per side)
2. Direct and Redirect (optional) Examinations (20 minutes per side)
3. Cross and Re-cross (optional) Examinations (14 minutes per side)
4. Closing Argument (4 minutes per side)

The Prosecution / Plaintiff gives the opening statement first. The Prosecution / Plaintiff gives the closing argument first; the Prosecution / Plaintiff may reserve up to one (1) minute of its closing time for a rebuttal. The Prosecution / Plaintiff's rebuttal is limited to the scope of the Defense's closing argument.

Attorneys are not required to use the entire time allotted to each part of the trial. However, time remaining in one part of the trial may NOT be transferred to another part of the trial.

**Rule 13. Timekeeping**

Time limits are mandatory and will be enforced. Each team is permitted to have its own timekeeper, who may use timekeeping aids (i.e. stopwatch and time cards) and who will be permitted to sit in, or next to, the jury box, but should be behind and out of the way of the scoring jurors; however, an official timekeeper will be assigned to each trial. It is the responsibility of a team to object to its adversary exceeding the time limits.

Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements.

Time does not stop for introduction of exhibits.

**Rule 14. Time Extensions and Scoring**

The judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the scoring jurors may determine individually whether or not to discount points in a category because of over-runs in time.

**Rule 15. Prohibited Motions**

All motions, other than those specifically provided for in the case materials, if any, shall not be allowed.

A motion for a recess may be used only in the event of a health emergency. To the greatest extent possible, team members are to remain in place. Should a recess be called, teams are not to communicate with any observers, coaches, or instructors regarding the trial.

**Rule 16. Sequestration**

Teams may not invoke the rule of sequestration.

**Rule 17. Bench Conferences**

Bench conferences may be granted at the discretion of the judge, but should be made from counsel table in the educational interest of handling all matters in open court.

**Rule 18. Use of Podium**

Participants may request from the judge to move away from the podium for opening statement and closing argument and may request permission to approach the witness when warranted.

**Rule 19. Supplemental Material/Illustrative Aids/Individual Attributes**

Teams may refer only to materials included in the trial packet or specifically authorized by a stipulation. No illustrative aids of any kind may be used, unless provided in the case packet. Pointers, markers, etc. are not "illustrative aids." Unless specifically permitted in the case material stipulations, teams shall not enlarge materials; however, copies may be made for publication to the jury. Teams may not issue exhibit notebook to the judge or scoring jurors. Teams may NOT refer to the individual attributes of its team members (i.e. height, weight, hair color, gender, race) as a basis for impeachment, credibility, or for any other reason unless specifically stated within the facts of the problem.

The only documents which the teams may present to the judge or scoring jurors are the individual exhibits as they are introduced into evidence and the team roster forms. Exhibit notebooks are not to be provided to the judge or scoring jurors.

**Rule 20. Trial Communication**

Instructors, alternates and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any recess time which may occur. Team members may, among themselves, communicate during the trial; however, no disruptive communication is allowed.

Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in a round may sit inside the bar.

**Rule 21. Viewing a Trial**

Team members, alternates, attorney / coaches, teacher-sponsors, and any other persons associated with a mock trial team are not permitted to view other teams in competition as long as their team remains in the competition.

**Rule 22. Videotaping/Photography**

Any team has the option to refuse participation in videotaping, tape recording, still photography, or media coverage, except during the championship round. Media coverage will be allowed by the two teams in the championship round and any team's participation in this competition shall be construed as a release by that team to videotape the championship round and to replay that videotape, in whole or in part, on television, and to duplicate and make that videotape available to the general public. If a team videotapes a round, it shall make available to the opposing team a copy of the tape at the opposing team's expense.

The rules in this section regarding videotaping / photography pertain to the state competition. District competitions may be run differently, so you should consult with your district coordinator.

**Rule 23. Decisions**

All decisions of the scoring panel are FINAL.

**Rule 24. Composition of Panel**

The scoring panel will consist of at least three individuals. The composition of the panel and the role of the judge will be at the discretion of the Mock Trial Chair and Committee as follows:

1. One scoring judge and two scoring jurors (all three complete score sheets);
2. One non-scoring judge and three scoring jurors (only jurors complete score sheets); or
3. One scoring judge, one attorney scoring juror and one scoring bailiff (all three complete score sheets).

**Rule 25. Score Sheets/Ballots**

The term "ballot" will refer to the decision made by a scoring juror as to which team made the best presentation in the round. The term "score sheet" is used in reference to the form on which speaker and team points are recorded. Score sheets are to be completed individually by the scoring jurors. Scoring jurors are not bound by the rulings of the judge. The team that earns the highest points on a scoring juror's score sheet is the winner of that ballot. The team that receives the majority of the three ballots wins the round. The ballot votes determine the win / loss record of the team for power-matching and ranking purposes. While the scoring panel may deliberate on any special awards (i.e., Outstanding Attorney / Witness) the scoring panel should not deliberate on individual scores.

**Rule 26. Completion of Score Sheets**

Score sheets are to be completed in four steps:

1. Speaker Points - Each scoring juror assigns a number of speaker points (1-10) for each section of the trial.
2. Sub-Total - At the end of the trial, each scoring juror totals the sum of each team's individual speaker points and places this sum in the Sub-Total box.
3. Team Points - Each scoring juror assigns a number of points (1-10) to each team in the Team Points box. NO TIE IS ALLOWED IN THE TEAM POINT BOX.
4. Final Point Total - Each scoring juror adds the sub-total and team points boxes to achieve a final point total for each team. NO TIE IS ALLOWED IN THE FINAL POINT TOTAL BOX. The team with the highest number of points in the Final Point Total box receives the ballot from that scoring juror.

**Rule 27. Score Sheet Availability**

Score sheets will not be made available to any person or team at any time during or after the state competition, with the exception that separate and optional comment sheets, if filled out and returned by a scoring juror, may be made available after the competition is over. However, following the completion of the competition, complete rankings of all teams participating in the competition (first place to last place) will be posted on the Tennessee Bar Association's Young Lawyers Division website. Additionally, upon request, each team's coach and / or team sponsor will be provided with a summary sheet showing, for each round of the competition, the following information:

1. Team Rankings, separated by win / loss brackets

2. Total Ballots won by each team
3. Total Points awarded to each team

The above data will be provided for informational purposes ONLY. At the conclusion of the state competition, all scores and rankings shall be FINAL at the close of the competition and may not be challenged. If any local competition wishes to provide the above data, the Mock Trial Committee will provide the local mock trial coordinator with the necessary software to create the summary sheets and will assist with this process.

**Rule 28. Team Advancement**

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

1. Win / Loss Record — equals the number of rounds won or lost by a team;
2. Total Number of Ballots — equals the number of scoring juror's votes a team earned in preceding rounds;
3. Total Number of Points — equals the number of points accumulated in each round;

**Rule 29. Power Matching/Seeding**

A random method of selection will determine opponents in the first round. A power-match system will determine opponents for all other rounds. The two schools emerging with the strongest record from the four rounds will advance to the final round. The first-place team will be determined by ballots from the championship round only.

Power matching will provide that:

1. Pairings for the first round will be at random;
2. Brackets will be determined by win / loss record. Sorting within brackets will be determined in the following order: (1) win / loss record; (2) ballots; (3) points; then (4) point spread. The team with the highest number of ballots in the bracket will be matched with the team with the lowest number of ballots in the bracket; the next highest with the next lowest, and so on until all teams are paired;
3. If there is an odd number of teams in a bracket, the team at the top of the next lower bracket will be moved into the bracket containing the odd number of teams.
4. The ultimate goal with power matching will be to maintain bracket integrity. However, the Mock Trial Chair (or local mock trial coordinator regarding local competitions) shall have the complete discretion to break bracket / power matching integrity, if necessary, to allow each team to have alternated between Prosecution / Plaintiff and Defense / Defendant at least once during the competition and to avoid two teams from the same school competing against each other and, in some cases, from having a team compete against another team from its district or a team from a prior round.

**Rule 30. Merit Decisions**

Judges and / or scoring jurors are not required to make a ruling on the legal merits of the trial, but are encouraged to do so. Judges / scoring jurors may not inform the students of score sheet results.

**Rule 31. Effect of Bye/Default**

A "bye" becomes necessary when an odd number of teams are present for the tournament. For the purpose of advancement and seeding, when a team draws a bye, it wins by default and will be given a win and the number of ballots and points equal to the

average of all winning teams' ballots and points for that same round. The Mock Trial Chair may, if time and space allow, arrange for a "bye round" to allow teams drawing a bye to compete against one another in order to earn a true score.

## II. RULES OF PROCEDURE

### A. Before the Trial

**Rule 32. Team Roster**

Copies of the Team Roster Form must be completed and submitted to the Mock Trial Committee Chair no later than 24 hours prior to the competition. Additionally, each Team Roster Form shall be duplicated by each team prior to arrival at the competition site, such that each team has at least six (6) copies of each Team Roster for each round of the competition. Before beginning a trial, the teams must exchange copies of the team roster form. Witness lists should identify the gender of each witness so that references to such parties will be made in the proper gender. Five (5) copies of the team roster form shall be given to the bailiff prior to the commencement of the round to be made available to the bailiff, scoring jurors, and judge.

**Rule 33. Stipulations**

When the Court asks the Prosecution / Plaintiff if it is ready to proceed with opening statements, the attorney assigned the opening statement should offer any stipulations into evidence. A copy of such stipulations should be submitted to the judge. Where facts included in a stipulation are known to a witness as specified within the stipulation, the witness may testify about that fact on direct or cross examination.

**Rule 34. The Record**

The stipulations and jury instructions will not be read into the record.

### B. Beginning the Trial

**Rule 35. Jury Trial**

The case will be tried to a jury; arguments are to be made to the judge and the scoring jury. Teams may address the scoring jurors located in the jury box as the jury.

**Rule 36. Standing During Trial**

Unless excused by the judge, attorneys will stand while giving opening and closing statements, during direct and cross examinations, and for all objections. Attorneys shall be granted authority to move freely about the courtroom during the trial.

**Rule 37. Objection During Opening Statement/Closing Argument**

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

If a team believes an objection would have been necessary during the opposing team's closing, a student may, following the closing arguments, raise his / her hand to be recognized by the judge and may say, "If I had been permitted to object during closing arguments, I would have objected to the opposing team's statement that ___." The judge will not rule on this "objection." Judges and scoring jurors will weigh the "objection" individually. No rebuttal by opposing team will be heard.

## C. Presenting Evidence

### Rule 38. Argumentative Questions

An attorney shall not ask argumentative questions. However, the Court may, in its discretion, allow limited use of argumentative questions on cross-examination.

### Rule 39. Lack of Proper Predicate/Foundation

Attorneys shall lay a proper foundation prior to moving the admission of evidence. After motion has been made, the exhibits may still be objected to on other grounds.

### Rule 40. Non-Responsive Witness

An attorney may object to a witness providing an on-responsive answer.

### Rule 41. Procedure for Introduction of Exhibits

As an example, the following steps effectively introduce evidence:

1. All evidence will be pre-marked as exhibits.

2. Ask for permission to approach the bench. Show the judge the marked exhibit: "Your honor, may I approach the bench to show you what has been marked as Exhibit No. __?"

3. Show the exhibit to opposing counsel.

4. Ask for permission to approach the witness. Give the exhibit to the witness.

5. "I now hand you what has been marked as Exhibit No. _____ for identification."

6. Ask the witness to identify the exhibit: "Would you identify it please?"

7. Witness answers with identification only.

8. Offer the exhibit into evidence: "Your Honor, we offer Exhibit No. ___ into evidence at this time. The authenticity of this exhibit has been stipulated."

9. Court: "Is there an objection?" (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)

10. 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?"

11. Court: "Exhibit No. ___ is / is not admitted."

### Rule 42. Use of Notes

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table verbally or through the use of notes.

**Rule 43. Redirect/Re-cross**

Redirect and Recross examinations are permitted, provided they conform to the restrictions of the Tennessee Mock Trial Rules of Evidence.

## D. Closing Arguments

**Rule 44. Scope of Closing Arguments**

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

## E. Critique

**Rule 45. The Critique**

The scoring panel is allowed 15 minutes for debriefing. The timekeeper / bailiff will monitor the critique following the trial. The critique sessions will be limited to the 15 minutes total time allotted.

## F. Pledge of Participation

**Rule 46. Pledge of Participation Required for Those Students Competing in the State Competition**

Each year the student competitors excel in the presentation and advocacy of the Mock Trial problem. In the recent past we have produced two National Champion teams from our State competition. We have strong competitors and believe that we can and will make a strong showing each year at the National Competition. In an effort to solidify the commitment of each team that competes at the Tennessee State High School Mock Trial Competition to attend the National High School Mock Trial Competition, the Tennessee Bar Association Young Lawyers Division requires the following pledge from teams competing in the state competition:

(a) Each student competitor who intends on competing in the State Competition must sign and date the attached Pledge of Participation; AND

(b) A parent / guardian of each student must sign and date the Pledge of Participation.

The above requirements must be complied with in order to participate in the Tennessee State High School Mock Trial Competition and shall be submitted to the Mock Trial Committee no later than 2 p.m. on the first day of competition.

Teams should use the form attached as Appendix B for pledges to compete.

## III. TENNESSEE HIGH SCHOOL MOCK TRIAL COMPETITION RULES OF EVIDENCE

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

For purposes of mock trial competition, the Rules of Evidence have been modified or simplified. They are based on the Tennessee Rules of Evidence and its numbering system. Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure. *Text in italics or underlined represent simplified or modified language.*

Not all judges will interpret the Rules of Evidence (or procedure) the same way, and mock trial attorneys should be prepared to point out specific rules (quoting, if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate. The Mock Trial Rules of Competition and these Tennessee Rules of Evidence (Mock Trial Version) govern the Tennessee High School Mock Trial Competition.

### Article I. General Provisions

**Rule 101. Scope.** —These rules shall govern evidence rulings in the 2010 Mock Trial state and district competitions.

**Rule 102. Purpose and construction.** —These rules shall be construed to secure the just, speedy, and inexpensive determination of proceedings.

**Rule 103. Rulings on evidence.** —*The Mock Trial Competition shall not include any offers of proof. The presiding judge shall rule on the admissibility of evidence upon objection from a party.*

**Rule 104. Preliminary questions.** —*Relevance Conditioned on Fact. —When the relevance of evidence depends on the fulfillment of a condition of fact, the court shall admit it upon the introduction of evidence sufficient to support a finding of the fulfillment of the condition. In the court's discretion, evidence may be admitted subject to subsequent introduction of evidence sufficient to support a finding of the fulfillment of the condition.*

**Rule 105. Limited admissibility.** —When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court upon request shall restrict the evidence to its proper scope and instruct the jury accordingly.

**Rule 106. Writings or recorded statements —Completeness.** —When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

## ARTICLE II. JUDICIAL NOTICE

Does not apply

## ARTICLE III. PRESUMPTIONS

Does not apply

## ARTICLE IV. RELEVANCE

**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.** — *Evidence which is not relevant is not admissible.*

**Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.** —Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

**Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes.** — *Does not apply as this is a civil case.*

**Rule 405. Methods of proving character.** —(a) Reputation or Opinion. —In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. After application to the court, inquiry on cross-examination is allowable into relevant specific instances of conduct. The conditions which must be satisfied before allowing inquiry on cross-examination about specific instances of conduct are:

(1) The court upon request must hold a hearing outside the jury's presence,

(2) The court must determine that a reasonable factual basis exists for the inquiry, and

(3) The court must determine that the probative value of a specific instance of conduct on the character witness's credibility outweighs its prejudicial effect on substantive issues.

(b) Specific Instances of Conduct. —In cases in which character or a trait of character of a person 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.** —(a) Evidence of the habit of a person, an animal, or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eye-witnesses, is relevant to prove that the conduct of the person, animal, or organization on a particular occasion was in conformity with the habit or routine practice.

(b) A habit is a regular response to a repeated specific situation. A routine practice is a regular course of conduct of an organization.

**Rule 407. Subsequent remedial measures.** —When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent

remedial measures is not admissible to prove strict liability, negligence, or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving controverted ownership, control, or feasibility of precautionary measures, or impeachment.

**Rule 408. Compromise and offers to compromise.** —Evidence of (1) furnishing or offering to furnish or (2) accepting or offering to accept a valuable consideration in compromising or attempting to compromise a claim, whether in the present litigation or related litigation, which claim was disputed or was reasonably expected to be disputed as to either validity or amount, is not admissible to prove liability for or invalidity of a civil claim or its amount or a criminal charge or its punishment. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence actually obtained during discovery merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution; however, a party may not be impeached by a prior inconsistent statement made in compromise negotiations.

**Rule 409. Payment of Medical and Similar Expenses.** —*Does not apply.*

**Rule 409.1 Expressions of sympathy or benevolence** —(a) That portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering or death of a person involved in an accident and made to such person or to the family of such person shall be inadmissible as evidence of an admission of liability in a civil action. A statement of fault that is part of, or in addition to, any of the above shall be admissible.

(b) For purposes of this Rule:

(1) "Accident" means an occurrence resulting in injury or death to one or more persons which is not the result of willful action by a party.

(2) "Benevolent gestures" means actions which convey a sense of compassion or commiseration emanating from humane impulses.

(3) "Family" means an injured party's spouse, parent, grandparent, stepparent, child, grandchild, sibling, half sibling, adopted sibling, or parent-in-law.

## ARTICLE V. PRIVILEGES

**Rule 501. Privileges recognized only as provided.** —Except as otherwise provided by constitution, statute, common law, or by these or other rules promulgated by the Tennessee Supreme Court, no person has a privilege to:

(1) Refuse to be a witness;

(2) Refuse to disclose any matter;

(3) Refuse to produce any object or writing; or

(4) Prevent another from being a witness or disclosing any matter or producing any object or writing.

*No statutory privileges apply to the 2010 Mock Trial case materials.*

## ARTICLE VI. WITNESSES

**Rule 601. General rule of competency.** —*All witnesses in the 2010 Mock Trial case materials are presumed competent to testify on the day of trial.*

**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's own testimony. This rule is subject to the provisions of Rule 703 relating to opinion testimony by expert witnesses.

**Rule 603. Oath or affirmation.** —Before testifying, every witness shall be required to declare that the witness will testify truthfully by oath or affirmation, administered in a form calculated to awaken the witness's conscience and impress the witness's mind with the duty to do so.

**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) the evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked.

(b) Specific Instances of Conduct. —Specific instances of conduct of a witness for the purpose of attacking or supporting the witness's character for truthfulness, other than convictions of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, if probative of truthfulness or untruthfulness and under the following conditions, be inquired into on cross-examination of the witness concerning the witness's character for truthfulness or untruthfulness or concerning the character for truthfulness or untruthfulness of another witness as to which the character witness being cross-examined has testified. The conditions which must be satisfied before allowing inquiry on cross-examination about such conduct probative solely of truthfulness or untruthfulness are:

(1) The court upon request must hold a hearing outside the jury's presence and must determine that the alleged conduct has probative value and that a reasonable factual basis exists for the inquiry;

(2) *The conduct must have occurred no more than ten years before commencement of the action or prosecution*; and

(3) If the witness to be impeached is the accused in a criminal prosecution, the State must give the accused reasonable written notice of the impeaching conduct before trial, and the court upon request must determine that the conduct's probative value on credibility outweighs its unfair prejudicial effect on the substantive issues.

(c) Juvenile Conduct. —Evidence of specific instances of conduct of a witness committed while the witness was a juvenile is generally not admissible under this rule. The court may, however, allow evidence of such conduct of a witness other than the accused in a criminal case if the conduct 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 in a civil action or criminal proceeding.

**Rule 609. Impeachment by evidence of conviction of crime.** —(a) General Rule. —For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime may be admitted if the following procedures and conditions are satisfied:

(1) The witness must be asked about the conviction on cross-examination. If the witness denies having been convicted, the conviction may be established by public record. If the witness denies being the person named in the public record, identity may be established by other evidence.

(2) The crime must be punishable by death or imprisonment in excess of one year under the law under which the witness was convicted or, if not so punishable, the crime must have involved dishonesty or false statement.

(3) If the witness to be impeached is the accused in a criminal prosecution, the State must give the accused reasonable written notice of the impeaching conviction before trial, and the court upon request must determine that the conviction's probative value on credibility outweighs its unfair prejudicial effect on the substantive issues.

(b) Time Limit. —Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed between the date of release from confinement and commencement of the action or prosecution; if the witness was not confined, the ten-year period is measured from the date of conviction rather than release. Evidence of a conviction not qualifying under the preceding sentence is admissible if the proponent gives to the adverse party sufficient advance notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence and 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.

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

(d) Juvenile Adjudications. —Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, allow evidence of a juvenile adjudication of a witness other than the accused in a criminal case 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 in a civil action or criminal proceeding.

(e) Pendency of Appeal. —The pendency of an appeal of a conviction does not render evidence of that conviction inadmissible. Evidence of the pendency of an appeal is admissible.

**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's credibility is impaired or enhanced.

**Rule 611. Mode and order of interrogation and presentation.** —(a) Control by Court. —The court shall exercise appropriate control over the presentation of evidence and conduct of the trial when necessary to avoid abuse by counsel.

(b) Scope of Cross-Examination. —A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.

(c) Leading Questions. —Leading questions should not be used on the direct examination of a witness except as may be necessary to develop testimony. Leading questions should be permitted on cross-examination. When a party calls a witness determined by the court to be a hostile witness, interrogation may be by leading questions.

**Rule 612. Writing used to refresh memory.** —If a witness uses a writing while testifying to refresh memory for the purpose of testifying, an adverse party is entitled to inspect it, to cross-examine the witness thereon, and to introduce in 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 and until 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 803(1.2).

(c) Opinions. —A prior statement in opinion form is admissible to impeach testimony.

**Rule 616. Impeachment by bias or prejudice.** —A party may offer evidence by cross-examination, extrinsic evidence, or both, that a witness is biased in favor of or prejudiced against a party or another witness.

**Rule 617. Impeachment by impaired capacity.** —A party may offer evidence that a witness suffered from impaired capacity at the time of an occurrence or testimony.

**Rule 618. Impeachment of expert by learned treatises.** —To the extent called to the attention of an expert witness upon cross-examination or relied upon by the 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, by other expert testimony, or by judicial notice, may be used to impeach the expert witness's credibility but may not be received as substantive evidence.

## ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

**Rule 701. Opinion testimony by lay witnesses.** —(a) Generally.—If a witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are

(1) rationally based on the perception of the witness and

(2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

(b) Value.

A witness may testify to the value of the witness's own property or services.

**Rule 702. Testimony by experts.** —If scientific, technical, or other specialized knowledge will substantially assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise.

**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. The court shall disallow testimony in the form of an opinion or inference if the underlying facts or data indicate lack of trustworthiness.

**Rule 704. Opinion on ultimate issue.** —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.

**Rule 705. Disclosure of facts or data underlying expert opinion.** —The expert may testify in terms of opinion or inference and give reasons without prior disclosure of 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 (1) an oral or written assertion or (2) 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.

**Rule 802. Hearsay rule.** —Hearsay is not admissible except as provided by these rules or otherwise by law.

**Rule 803. Hearsay exceptions.** —The following are not excluded by the hearsay rule:

(1.1) Prior Statement of Identification by Witness. —A statement of identification of a person made after perceiving the person if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement.

(1.2) Admission by Party-Opponent. —A statement offered against a party that is (A) the party's own statement in either an individual or a representative capacity, or (B) a statement in 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 an agent or servant concerning a matter within the scope of the agency or employment made during the existence of the relationship under circumstances qualifying the statement as one against the declarant's interest regardless of declarant's availability, or (E) a statement by a co-conspirator of a party during the course of and in furtherance of the conspiracy, or (F) a statement by a person in privity of estate with the party. An admission is not excluded merely because the statement is in the form of an opinion. Statements admissible under this exception are not conclusive.

(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 Condition. —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 and Treatment. —Statements made for purposes of medical diagnosis and treatment describing medical history; 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 and 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's 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 and a business duty to record or transmit 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 or by certification that complies with Rule 902(11) or a statute permitting certification, 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, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Public Records and Reports. —Unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness, records, reports, statements, or data compilations in any form of public offices or agencies setting forth the activities of the office or agency or matters observed pursuant to a duty imposed by law as to which matters there was a duty to report, excluding, however, matters observed by police officers and other law enforcement personnel.

(8) Records of Vital Statistics. —Records or data compilations in any form of births, fetal deaths, deaths, marriages, or divorces, if the report was made to a public office pursuant to requirements of law.

(9) Marriage, Baptismal, and Similar Certificates. —Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament made by a member of the clergy, a public official, or another person authorized by the rules or practices of a religious organization or by law to perform the act certified and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(10) Family Records. —Statements of fact concerning personal or family history contained in family Bibles, genealogies, engravings on rings, inscriptions on family portraits, engravings on burial urns, crypts, tombstones, or the like.

(11) Records of Documents Affecting an Interest in Property. —The record of a document purporting to establish or affect an interest in property as proof of the contents of the original recorded document and its execution and delivery by each person by whom it purports to have been executed if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(12) Statements in Ancient Documents Affecting an Interest in Property. —Statements in a document in existence thirty years or more purporting to establish or affect an interest in property, the authenticity of which is established.

(13) Market Reports and Commercial Publications. —Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(14) Reputation Concerning Personal or Family History. —Reputation among members of a person's family by blood, adoption, or marriage or among associates or in the community concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(15) Reputation Concerning Ancient Boundaries. —Reputation in a community, arising before the controversy and existing thirty years, as to the boundaries of or customs affecting lands in the community.

(16) Reputation As to Character. —Reputation of a person's character among associates or in the community.

(17) Judgment of Previous Conviction. —Evidence of a final judgment 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 prosecution in a criminal case for purposes other than impeachment, judgments against persons other than the accused. The pendency of an appeal may be shown but does not affect admissibility.

(18) Judgment as to Personal or Family History or Boundaries. —Judgments as proof of matters of personal or family history or boundaries, which matters were essential to the judgment.

(19) Prior Inconsistent Statements of a Testifying Witness. —A statement otherwise admissible under Rule 613(b) if all of the following conditions are satisfied:

> (A) The declarant must testify at the trial or hearing and be subject to cross-examination concerning the statement.
>
> (B) The statement must be an audio or video recorded statement, a written statement signed by the witness, or a statement given under oath.
>
> (C) The judge must conduct a hearing outside the presence of the jury to determine by a preponderance of the evidence that the prior statement was made under circumstances indicating trustworthiness.

**Rule 804. Hearsay exceptions; declarant unavailable.** —(a) Definition of Unavailability. — "Unavailability of a witness"includes situations in which the declarant —

(1) Is exempted by ruling of the court on the grounds 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) Demonstrates 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 the declarant's 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 by process; or

(6) For depositions in civil actions only, is at a greater distance than 100 miles from the place of trial or hearing.

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 had both an opportunity and a similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death. —In a prosecution for homicide, a statement made by the victim while believing that the declarant's death was imminent and 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.

(4) Statement of Personal and Family History. —A statement made before the controversy arose (A) concerning declarant's own birth, adoption, marriage, divorce, or legitimacy; relationship by blood, adoption, or marriage; ancestry; or other similar fact of personal or family history; even though the declarant had no means of acquiring personal knowledge of the matter asserted; or (B) 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 to be likely to have accurate information concerning the matter declared.

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

**Rule 805. Hearsay within hearsay.** —Hearsay within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these rules or otherwise by law.

**Rule 806. Attacking and supporting credibility of declarant.** —When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked and, if attacked, may be supported by any evidence which would be admissible for those purposes if declarant had testified

as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

## ARTICLE IX. AUTHENTICATION

**Rule 901. Requirement of authentication or identification.** —(a) General Provision. —The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to the court to support a finding by the trier of fact that the matter in question is what its proponent claims.

(b) Illustrations. —By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of Witness With Knowledge. —Testimony that a matter is what it is claimed to be.

(2) Nonexpert Opinion on Handwriting. —Nonexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by Trier of Fact or Expert Witness. —Comparison by trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive Characteristics and the Like. —Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice Identification. —Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone Conversations. —Telephone conversations, by evidence that a call was made to the number assigned at the time by a telephone company to a particular person or business if (A), in the case of a person, circumstances including self-identification show the person answering to be the one called or (B), in the case of the business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public Records or Reports. —Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office (or a purported public record, report, statement, or data compilation in any form) is from the public office where items of this nature are kept.

(8) Ancient Documents or Data Compilation. —Evidence that a document or data compilation in any form (A) is in such condition as to create no suspicion concerning its authenticity, (B) was in a place where, if authentic, it would likely be, and (C) has been in existence thirty years or more at the time it is offered.

(9) Process or System. —Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods Provided by Statute or Rule. —Any method of authentication or identification provided by Act of Congress or the Tennessee Legislature or by other rules prescribed by the Tennessee Supreme Court.

**Rule 902. Self-authentication.** —Extrinsic evidence of authenticity as a condition precedent to admissibility is not required as to the following:

(1) Domestic Public Documents Under Seal. —A document bearing a seal purporting to be that of the State of Tennessee, the United States (or of any other state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands), or of a political subdivision, department, office, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic Public Documents Not Under Seal. —A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (1) having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign Public Documents. —A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make execution or attestation, accompanied by a final certification as to the genuineness of the signature and official position (A) of the executing or attesting person or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may for good cause shown order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) Certified Copies of Public Records. —A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office (including data compilations in any form), certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) of this rule or complying with any Act of Congress or the Tennessee Legislature or rule prescribed by the Tennessee Supreme Court.

(5) Official Publications. —Books, pamphlets, or other publications purporting to be issued by public authority.

(6) Newspapers and Periodicals. —Printed material purporting to be newspapers and periodicals.

(7) Trade Inscriptions and the Like. —Inscriptions, sign, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control or origin.

(8) Acknowledged Documents. —Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) Commercial Paper and Related Documents. —Commercial paper, including all signatures, and related documents to the extent provided by general commercial law.

(10) Presumptions Under Acts of Congress or the Legislature. —Any signature, document, or other matter declared by Act of Congress or the Tennessee Legislature to be presumptively or prima facie authentic.

(11) Certified Records of Regularly Conducted Activity. —The original or a duplicate of a domestic record of regularly conducted activity that would be admissible under Rule 803(6) if accompanied by an affidavit of its custodian or other qualified person certifying that the record —

(A) was made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of and a business duty to record or transmit those matters;

(B) was kept in the course of the regularly conducted activity; and

(C) was made by the regularly conducted activity as a regular practice.

A party intending to offer a record into evidence under this paragraph must provide written notice of that intention to all adverse parties, and must make the record and declaration available for inspection sufficiently in advance of their offer into evidence to provide an adverse party with a fair opportunity to challenge them.

**Rule 903. Subscribing witness' testimony unnecessary.** —The testimony of a subscribing witness is not necessary to authenticate a writing unless required by statute.

## ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS

**Rule 1001. Definitions** —For purposes of this article the following definitions are applicable:

(1) Writings and Recordings. —"Writings" and "recordings"consist of letters, words, numbers, sounds, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

(2) Photographs. —"Photographs" include still photographs, x-ray films, video tapes, and motion pictures.

(3) Original. —An "original"of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original"of a photograph includes the negative or any print. If data are stored in a computer or similar device, any printout or other output readable by sight and shown to reflect the data accurately is an "original."

(4) Duplicate. —A "duplicate" is a copy produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

**Rule 1002. Requirement of original.** —To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules.

**Rule 1003. Admissibility of duplicates.** —A duplicate is admissible to the same extent as an original unless a genuine question is raised as to the authenticity of the original.

**Rule 1004. Admissibility of other evidence of contents.** —The original is not required, and other evidence of a writing, recording, or photograph is admissible if —

(1) Originals Lost or Destroyed. —All originals are lost or destroyed, unless the proponent lost or destroyed them in bad faith; or

(2) Original Not Obtainable. —No original can be obtained by any available judicial process or procedure; or

(3) Original in Possession of Opponent. —At a time when an original was under the control of the party against whom offered, that party was put on notice by the pleadings or otherwise that the contents would be a subject of proof at the hearing but does not produce the original at the hearing; or

(4) Collateral Matters. —The writing, recording, or photograph is not closely related to a controlling issue.

**Rule 1005. Public records.** —The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible may be proved by copy certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which compiles with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

**Rule 1006. Summaries.** —The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary or calculation. The originals or duplicates shall be made available for examination or copying, or both, by other parties at reasonable times and places. The court may order that they be produced in court.

**Rule 1007. Testimony or written admission of party.** —Contents of writings, recordings, or photographs may be proved by the testimony, deposition, or written admission of the party against whom offered, without accounting for nonproduction of the original.

**Rule 1008. Functions of court and jury.** —When the admissibility of other evidence of contents of writings, recordings, or photographs under these rules depends upon the fulfillment of a condition of fact, the question of whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. When an issue is raised as to (a) whether the asserted writing, recording, or photograph ever existed, or (b) whether another writing, recording, or photograph produced at the trial is the original, or (c) whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

# DISTRICT COORDINATOR'S CERTIFICATION OF SCHOOLS REGISTERED FOR DISTRICT COMPETITION

**APPENDIX A to the Rules of the Tennessee High School Mock Trial Competition**

The following schools have registered that they will be competing:

1. Team Name: _____
2. Team Name: _____
3. Team Name: _____
4. Team Name: _____
5. Team Name: _____
6. Team Name: _____
7. Team Name: _____
8. Team Name: _____
9. Team Name: _____
10. Team Name: _____
11. Team Name: _____
12. Team Name: _____
13. Team Name: _____
14. Team Name: _____
15. Team Name: _____

Our district competition will be held on the following date(s): _____

My contact number for the day of our district competition: _____

Our competition will be held at the following location: _____

District coordinator name _____

District # _____ Date form completed _____

**PLEASE FAX THIS FORM TO MARISA COMBS at 615-259-1389**
**on or before Monday, February 1, 2010 at 5:00 pm.**

# 2010 NATIONAL MOCK TRIAL
# PLEDGE OF PARTICIPATION

**APPENDIX B to the Rules of the Tennessee High School Mock Trial Competition**

**TEAM NAME** _____

**ADVISOR/TEAM COACH** _____

**ADVISOR'S/COACH'S SIGNATURE** _____

I pledge that if my team wins the Tennessee State High School Mock Trial Competition, I will represent Tennessee at the National Mock Trial Competition May 5-9, 2010, in Philadelphia. I understand that participation in the state competition is contingent on signing this pledge. **The form is due back to the TBA by 2 p.m. on Friday, March 19**. Multiple copies of the form may be submitted to expedite the gathering of signatures.

| Student Name | Student Signature | Parent/Guardian Signature | Competed At Local Competition* |
|---|---|---|---|
| **1** | | | Yes No (circle one) |
| **2** | | | Yes No |
| **3** | | | Yes No |
| **4** | | | Yes No |
| **5** | | | Yes No |
| **6** | | | Yes No |
| **7** | | | Yes No |
| **8** | | | Yes No |
| **9** | | | Yes No |
| **10** | | | Yes No |
| **11** | | | Yes No |
| **12** | | | Yes No |

*Per Rule 8(c), a team may change members between the district and state competitions provided that the team retains a majority of the original members from the district competition. For example, if a team at district was comprised of eight (8) students, then the team at state must have at least five (5) of the original members, while up to three (3) may be replaced with different individuals. Alternates do not count for purposes of this rule.