

TEXAS HIGH SCHOOL MOCK TRIAL COMPETITION

MOCK TRIAL PROCEDURE AND PRESENTATION

Observe the following rules in the courtroom: Do not smoke or eat; do not bring drinks into the courtroom. In addition, remain seated at the counsel table during questioning, except when granted permission to approach the bench; rise when addressing the judge; direct all remarks to the judge, jury, or witness – not to opposing counsel.

The term "Plaintiff" is used in a civil trial to refer to the party that has brought the case before the court; and in a criminal trial, the term "Prosecution" is used. Wherever the mock trial case materials refer to the term, "Plaintiff," teams are to substitute the term, "Prosecution," if working with a criminal case.

The following are guidelines designed to assist teams in preparing for their presentation. The guidelines follow the sequence of the mock trial.

I. OPENING STATEMENTS

Position: Standing before the jury

Purpose: To introduce yourself, co-counsel, and your client and to acquaint the jury and judge with the nature of the case. Outline the case from your point of view and mention key witnesses' testimony and tell the jury and judge what relief you are requesting.

Avoid: Too much narrative detail about witness testimony and exaggeration and overstatement of facts, which may not be proven. Arguing or discussing the law usually is not permitted here. Avoid reading too much, if using notes. Defendant should not repeat undisputed facts.

II. PRESENTING EVIDENCE

DIRECT EXAMINATION (attorneys call and question own witnesses)

1. Direct questions generally are phrased to evoke facts from the witnesses. Witnesses may not be asked leading questions by the attorney giving the direct examination. A leading question is one that suggests to the witnesses the answer desired by the examiner and often suggests a "yes" or "no" answer.

Example of a direct question: "Mr. Patterson, prior to today, have you ever met the subject of this petition, Jeremiah Winstead?"

Example of a leading question: "Mr. Patterson, isn't it true that you kidnapped Jeremiah at the Hot Shoppes on New York Avenue?"

While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information and may not call for the creation of material facts. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story. Narrative questions are objectionable. (See Rule 607)

As a general rule, witnesses may not give opinions or questions that require special knowledge or qualifications unless they are qualified as "experts." Non-expert witnesses may give opinions as to what they saw and heard if those opinions are related to the facts in issue and helpful in explaining their story.

An expert may be called as a witness to render an opinion based on professional experience. An expert must be qualified by the attorney for the party for which the expert is testifying. This means that before an expert witness can be asked for an expert opinion, the questioning attorney must ask for the witness' qualifications and experience. It is not necessary to ask the judge to recognize a witness as an expert.

Position: Seated at the counsel table, except when introducing evidence.

Purpose: To present evidence that warrants submission of your case to the jury and judge. Present facts that support your case with clarity. Show your witnesses at their best. When your facts are in, pass the witness for cross-examination.

Avoid: Complex and verbose questions. Keep it simple. Take the witness by small steps. Don't attempt to elicit conclusions, that is the jury's task (or judge's responsibility if there is no jury present). Avoid redundant, monotonous questioning. Use care in allowing narrative testimony; it could prove dangerous if the witness gets out of your control.

2. **Scope of Witness Examination:** (Limited by rules of evidence explained in Rules 401, 402 403: Relevant Evidence.)

· **CROSS EXAMINATION** (questioning of other side's witnesses)

2. **Form of Questions:** An attorney may ask leading questions when cross examining the opponent's witnesses. Questions tending to evoke a narrative answer should be avoided.
3. **Scope of Witness Examination:** In the mock trial competition, attorneys are allowed unlimited range on cross examination of witnesses as long as questions are relevant to the case and do not call for the creation of material facts. Witnesses must be called by their own team and may not be recalled by either side; therefore, all desired questioning of a particular witness must be done by both sides in a single appearance on the witness stand.
4. **Impeachment:** On cross examination, the attorney may want to show the jury and the judge that the witness should not be believed. This may be done by asking questions about prior conduct that make the witness' credibility doubtful. This may also be done by asking the witness a series of questions intended to show the judge or jury that he witness has testified differently in a signed and sworn statement.

If the credibility or reputation for truthfulness of the witness has been attacked on cross examination, the attorney whose witness has been damaged may wish to ask more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness' truth telling image in the eyes of the court.

- Position:** Seated at the counsel table, except when introducing evidence and when making or responding to objections.
- Purpose:** To discredit the witness and to discover the flaws in the witness' testimony. Try to secure admissions that help your case.
- Avoid:** Hostility toward the witness. Juries and judges usually resent it. Don't engage in "fishing expeditions" by giving the witness a chance to clarify damaging statements. When you have a favorable answer, drop the matter and wait for closing arguments to emphasize it.

NOTE: IMPEACHMENT

On cross-examination, the attorney wants to show the jury and judge that the witness should not be believed. This is called impeaching the witness. It may be done by asking questions about prior conduct that make the witness' credibility doubtful. Impeachment may also include asking the witness whether he or she has ever testified differently, then showing the witness his or her sworn statement and asking the witness to read the portion in conflict. The attorney should ask the witness whether the statement was made under oath, at a time much closer to the events in controversy, and contained all that the witness could then remember. The attorney may then want to (1) leave the matter and point out in closing arguments the contradiction between the statement and the witness' testimony, both of which are under oath; (2) ask the witness why the testimony is different today under oath than it was when it was under oath and much nearer in time to the events (this is a dangerous question, however); or (3) ask the witness whether he was lying under oath when the statement was given or lying under oath today (this is also a dangerous question unless the contradiction is very clear, definite, and material).

Witnesses must admit making their statements when directly confronted with the question, "Do you remember making and signing this statement under oath?" or a question substantially similar. Don't waste time by "over impeaching" on matters that are not material to your case.

OBJECTIONS

- Position:** From the counsel table (rising to address the judge).
- Purpose:** To present to the judge a rule of evidence that would bar an answer to the question asked (or result in striking from the record the answer, if already given.)
- Procedure:** An attorney may object any time that opposing counsel has violated the Rules of Evidence. The attorney making the objection should stand up at the time of the violation and state the reason.

The judge will turn to the attorney who asked the question, and that attorney usually will have a chance to explain why the objection should not be "sustained" (accepted) by the judge.

The judge will then decide to either "sustain" the objection, thereby disallowing the question or discarding the answer; or the judge will "overrule" the objection, thereby allowing the question to be answered or the answer to remain on the record. If the argument on the application of the rules of evidence would, in itself, result in the jury being made aware of the challenged evidence, objecting counsel should ask to approach the bench before making the objection (although, for mock trial purposes, the objection and argument should be made so that any competition judges sitting as jurors can hear.)

REMEMBER: Winning or losing the ruling on an objection is not what is important, but rather how knowledgeable of the Rules the team is and how each team reacts to the decision of the presiding judge. What is important is the presentation of the objection and the opposing counsel's response (both verbally and strategically) to the objection and to the Court's ruling.

Opposing Counsel: At the moment an objection is raised, opposing counsel should immediately rise and be prepared to respond to the objection, giving a reason for the objection to be overruled.

NOTE: HEARSAY RULE

Although hearsay is generally not admissible, there are certain out-of-court statements that are treated as not being hearsay, and there are out-of-court statements that are allowed into evidence as exceptions to the rule prohibiting hearsay. An example of hearsay is a witness testifying that he heard another person saying something about the facts of the case.

Example: While on the stand, Mr. Patterson says, "I heard a member of the New Family say that Solomon was a fraud." (it would not be admissible to prove that Solomon was a fraud, which was the matter asserted in the out of court statement. However, it might be admissible to prove that Mr. Patterson had some warning that Solomon should not be trusted, if that were an issue in the case, since it would not then be offered for the truth of the matter asserted).

Why should the complicated condition be added that the out of court statement is only hearsay when "offered for the truth of the matter asserted" The answer is clear when we look to the primary reasons for the exclusion of hearsay, which are the absence, in hearsay testimony, of the normal safeguards of oath, confrontation, and cross-examination for the credibility of the out of court speaker.

For example, if Mrs. Jones testified in court, "My best friend, Mrs. Smith, told me that Bill was driving a car 90 miles per hour" and that out-of-court statement was offered to prove the truth of the matter asserted (that Bill was driving a car 90 miles per hour), we would be interested in the credibility of Mrs. Smith, her opportunity and capacity to observe, the accuracy of her reporting and her tendency to lie or tell the truth.

The lack of oath, confrontation, and cross-examination would make the admission into evidence of Mrs. Smith's assertion about Bill unfair to the opposing party. If the statement were offered, however, to show that Mrs. Smith could speak English, then its value would hinge on Mrs. Jones' credibility (who is under oath, present, and subject to cross-examination) rather than Mrs. Smith's, and it would not be hearsay if offered to prove that the salesman made such a representation to the witness. (The statement is not offered to prove the truth of the matter

asserted.) If offered to prove that the car has never been in an accident, it would not be allowed because it would be hearsay.

REDIRECT/RE-CROSS (at team's option)

Position: Seated at the counsel table.
Purpose: To rehabilitate a witness or repair damage done by opposing counsel.

EXHIBITS

Position: Will vary.
Purpose: So that exhibits may be referred to in detail and parts read to the jury.
Procedure: This is a special procedure for introducing physical evidence during a trial. The exhibit must be relevant to the case and the attorney must be prepared to defend its use and upon what basis. (Refer to the procedure set forth in Rule 4.23 in this packet.)

At the conclusion of Plaintiff's evidence, the Plaintiff states, "The Plaintiff rests its case, your Honor." This is the same procedure for the Defendant at the conclusion of the Defendant's evidence.

CLOSING ARGUMENTS

Position: Stand facing the jury.
Purpose: To summarize the case. Point out testimony that supports your case and that which damages your opponent's. Focus on and argue only what you believe is important to your case. Be an advocate – passionately urge your point of view. Be dynamic. Simply state your case so that you are sure it is fully understood. Correct any misunderstanding that the jury or judge may have. You may use all exhibits that have been admitted into evidence in your closing argument. Point out bias, credibility, self-interest, or prejudice of witnesses.
Avoid: Assuming the jury and judge have understood the impact of all of the testimony; however, avoid a boring review of the facts. Be cautious in using ridicule, for while it can be effective, it is also dangerous. Avoid weak words such as "we think" and "we believe."