

2021 NEBRASKA HIGH SCHOOL MOCK TRIAL RULES

VIRTUAL COMPETITION

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Given the fluid nature of Covid-19 variants, the Judge Lyle Strom High School Mock Trial Program adopts the following PROVISIONAL rules for a virtual competition. The 2021 State Championship will be held via Zoom.

I. RULES OF THE COMPETITION

A. ADMINISTRATION

The Rules of the Competition are based on the rules of the National High School Mock Trial Championship. There are some modifications specifically for Nebraska.

1. CODE OF ETHICAL CONDUCT FOR ALL PARTICIPANTS

The Rules of the Competition (Rules), as well as proper rules of courthouse and courtroom decorum and security, must be followed. In the event of a Gross Rules violation, the Mock Trial Commission will be contacted to determine an appropriate remedy. The Nebraska State Bar Foundation Board of Directors created the Commission (see Rule 22).

Please follow a proper sense of fairness in the competition and understand that the Mock Trial Commission possesses the discretion to impose any appropriate sanctions. Sanctions can be imposed for any breaches of decorum that affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge, or the Mock Trial Program. The sanctions may include but are not limited to an adjustment of points, disqualification, immediate exclusion from the competition, and the forfeiture of all awards.

All teams are responsible for the conduct of persons associated with their team during the competition. The team members, coaches and team supporters shall be bound by the CODE OF ETHICAL CONDUCT (CODE) at all times. Everyone shall exhibit and act with civility, professionalism, integrity, honesty, and good sportsmanship in victory and in defeat. Showing respect for team members, coaches, supporters, opponents, volunteer judges, and Bar Foundation staff is expected.

Scouting by a team, its teachers, attorneys, students, parents or by affiliates of any other team is prohibited. No information about any previous trials may be shared with any other team/school at either the regional or state competition.

The principal, teacher and attorney coaches, and students are responsible for reading and understanding the Rules of the Competition and the CODE. The Principal and Coaches shall be responsible for educating team members and team supporters about the CODE and shall encourage compliance with it. All coaches are in positions of authority and should serve as positive role models for the students. Students shall not willfully violate the Rules.

Each team and every team member shall consent to the Bar Foundation recording each trial.

Videotaping or audio recording at any trial is prohibited by team members, the teacher and attorney coaches or anyone else associated with a team.

At the conclusion of the competition, any teacher coach may request the links to the recordings of that specific team's trials.

All teacher and/or attorney coaches are encouraged to resolve any issues between the schools themselves before involving the State Coordinator.

Please sign the Code of Ethical Conduct form found on the Bar Foundation website and submit it to the Bar Foundation office.

2. Online Zoom Protocol

1. Zoom will be used for the virtual competition. The link will be emailed to the coaches for distribution to the Official Team Members.
2. Admittance to the room shall be approved by Bar Foundation staff.
3. It is not permissible to share Zoom links with anyone that is not a competing team member, teacher and or attorney coach. Do not post links on social media or other platforms.
4. Anyone who violates Zoom security will be automatically disqualified from the Competition.
5. No virtual backgrounds are allowed except for solid color black or white.
6. Except for timekeeper, the Zoom chat is not to be used during the trial for communications, including the private chat feature. Students on the competing side only (attorneys and witnesses) may communicate privately with one another using other methods such as text (with phones on vibrate or silent), or a different chat platform.
7. All cell phones need to be silenced or on vibrate. Participants need to take precautions to have a quiet background during their performance.

3. EMERGENCIES – VIRTUAL COMPETITION

Before The Trial:

If there is an emergency before the start of the trial (30-60 minutes in advance of the start time) where a team is unable to call upon any alternates and there are less than six (6) students participating in that specific trial, then the coach (teacher or attorney) shall notify the Bar Foundation staff. Teams shall select one of the options listed below.

OPTION 1. The team may compete with fewer than six (6) team members with the understanding that points may be deducted from the point totals at the discretion of the scoring judges.

OPTION 2. The team may forfeit that specific trial. A team that forfeits will receive a loss, zero ballots and the average number of points from all competing teams in that Region on that specific trial date.

During The Trial:

If an emergency occurs during the trial where a team is unable to call upon any alternates and has fewer than six (6) team members participating, the presiding judge shall have

discretion to continue the trial with fewer than six (6) team members (Option 1 above) or to forfeit the trial (Option 2 above).

Technical Difficulties

For purposes of this rule, technical difficulties include internet failure and computer, device, or microphone failure. Failure of a camera only does not permit an emergency substitution under this rule. Students who lose internet connection shall rejoin the trial using a telephonic connection, if possible.

In the event of technical difficulties, the presiding judge shall have discretion to declare a brief recess to resolve any technical difficulty substantially impairing a student's participation in the trial. If the technical difficulty cannot be resolved within a reasonable, but brief, amount of time, then the trial will continue with another member of the affected team substituting for the affected team member. The emergency substitute must be a member of the same team as the affected participant.

Before making an emergency substitution, the affected team must make the presiding judge aware, by stating words to the effect of, *"Your honor, before I begin, I would like to inform the court that I am [insert name] and I am substituting for [insert name], who is unable to compete due to technical difficulties."* Teams shall advise the State Coordinator via email of any emergency substitution following the round of competition.

The presentation will be scored based on the performance by the initial team member and the emergency substitute, taken as a whole. Points should not be deducted due to technical difficulties in this specific situation.

If the presiding judge determines that a student is unable to compete in a role due to technical difficulties and to minimize disruption, the affected student is not permitted to return and compete in the role for which a substitution was made. For purposes of this rule, a witness examination consisting of direct, cross, any re-direct and any re-cross is one role, so that a student who requires an emergency substitution for a witness examination may not return and participate until the entire witness examination is completed. If the technical difficulty is resolved, the affected student may return and participate in his/her other roles, if any.

In the event of a loss of connectivity for a timekeeper, that team shall defer to its opponent's timekeeper for that trial segment. The team whose timekeeper has lost connectivity may substitute another timekeeper as qualified under Rule 13 for the remaining trial segments. Consistent with Rule 13, the timekeepers shall confer regarding time remaining at the beginning of each trial segment.

Technical emergencies resulting from the loss of connectivity of a presiding or scoring judge shall be handled in accordance with Rule 24.

If a technical emergency prevents an entire team from competing in part of or all of a round, the presiding judge shall declare a recess of up to 15 minutes, to allow that team to reconnect, either via video or by connecting on audio-only via telephone. If reconnection is impossible, a forfeit shall be declared in favor of the team that maintains its connectivity.

If fewer than five witnesses have completed their cross-examination and either team loses connectivity, then the Bar Foundation will reschedule that specific trial.

If at least five witnesses have completed their cross-examination, then the scoring judges must complete their score sheet. The team that lost connectivity will receive the average score of the five witnesses as the score for the sixth witness and or for the closing argument. The team that remained connected will receive a "10" for their closing argument.

No student, team or school may fake/invent a technical difficulty or invoke the technical difficulty rule for purposes other than a genuine technical difficulty. Such an act would violate the Rules of Competition and the CODE and may be sanctioned at the discretion of the Commission through point deductions or other means up to and including disqualification from the competition.

If a team is unable to participate in a scheduled virtual trial due to COVID-19 and as a result the competition is unable to occur on that scheduled calendar day, then the trial may be rescheduled. The final determination will be up to the State Coordinator to find a mutually agreed upon date and time. If no mutually acceptable date and time are found, then the team unable to compete will be deemed to have forfeited this specific trial and that team will receive a loss, zero ballots and the average score of all teams within that region for that specific round.

The rescheduled trial shall be held within one week of the original trial. Rescheduling of a trial will only be allowed one time during the entire competition.

No virtual trials will be held on the weekend.

B. THE PROBLEM

Rule 1. Rules

All trials are governed by the Nebraska High School Mock Trial Rules of the Competition, the Rules of Procedure, and the Federal Rules of Evidence (Mock Trial Version). Questions or interpretations of these rules are within the discretion of the Regional Coordinators and State Coordinator, whose decisions are final. Any Post-Trial Objections (Rule 22) involving a Gross Rules Violation shall be decided by the Mock Trial Commission.

Rule 2. The Problem

The problem is an original fact pattern, which may contain any or all of the following: statement of facts, 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 that witness's own statement, the statement of facts, if present, and/or any necessary documentation relevant to that witness's testimony.

- If, during direct examination, an attorney asks a question which calls for an invention of facts, the question is subject to objection under Rule 4.
- If, during cross-examination, an attorney asks a question which calls for an invention of facts, the witness may or may not respond, so long as any response is consistent with the witness's statement or affidavit. The question is not subject to objection. See Rule 4 for further clarification.
- A witness is not bound by facts contained in other witness statements.

Rule 4. Invention of Facts

An invention of facts is best attacked through impeachment and closing arguments and are to be dealt with during the trial. The purpose of this rule is to keep the case as even as possible by not allowing either side to create an advantage by inventing facts. In real trials, this rule is not necessary because all of the facts are within the knowledge of the witnesses. Since Mock Trial uses created fact situations, all of the necessary facts may not be within the knowledge of the witnesses. Therefore, for Mock Trial we need a rule to prevent inventions of facts that are not included in the case materials.

When an attorney objects to an invention of facts, the judge will rule to clarify the course of further proceedings. The decision of the presiding judge regarding invention of facts or evidentiary matters is final.

Direct and Re-direct Examination

Attorneys shall not ask questions calling for an invention of facts and witnesses shall not provide answers that involve an invention of facts. Attorneys for the opposing team may refer to Rule 4 in a special objection, such as: "Objection, Your Honor. The question calls for an invention of facts."

Cross and Re-cross Examination

An invention of facts may only be allowed on cross or re-cross examination and only if the question being asked calls for facts that are not included in the case materials. If a witness is asked a question calling for an invention of facts, the witness may respond:

1. "I do not know the answer to that question because that information is not contained in the Nebraska Mock Trial case materials." OR
2. With any answer which is consistent with the witness's affidavit and other substantive issues of the case.

An answer that is contrary to the witness's affidavit may be impeached.

Rule 5. Gender of Witnesses

All witnesses are gender neutral. The preferred pronoun of a witness should be indicated on the Team Roster. Any student may portray the role of any witness.

Rule 6. Voir Dire

Voir dire examination of a witness is not permitted. This is the preliminary questioning of a witness or juror to determine competency, prejudices, biases, or personal knowledge.

C. THE TRIAL

Rule 7. Team Eligibility

Each team competing in the Judge Lyle Strom High School Mock Trial Program must be comprised of students from the same school who are registered in grades 9-12 at a Nebraska public, private or home school.

Each school is allowed to have two (2) Mock Trial teams for the 2021-2022 school year.

Special permission may be granted for two schools to register as a combined team. Contact the State Mock Trial Coordinator. Exceptions on eligibility issues will be considered on a case-by-case basis.

A team that earns the right to compete at the State Championship shall be comprised of the same students (including alternates) that participated at the Regional competition. If any student participant from the Mock Trial team is unable to compete and there are no alternates, another student may substitute for this participant. The individual acting as the substitute must be enrolled as a student at the school and cannot have served on any other Mock Trial team at that school during that competition year. Participation by an ineligible team member shall result in forfeiture of each trial in which the ineligible team member participated.

To participate in the competition, schools must register their teams by doing the following:

1. Complete and submit the Official Mock Trial Entry Form. This form is located on the Bar Foundation website at <https://www.nebarfnd.org/civics-education/mock-trial>. The form can be completed via the Google Doc link or printed, and returned by fax, email, or mail.
2. Submit the **Entry Form and the \$50 PER TEAM registration fee by Friday, September 17, 2021**. The registration fee can be paid online via PayPal on the Foundation website or by mailing a check made payable to the **Nebraska State Bar Foundation**.
3. **There is a \$100 late fee for any registration received after the deadline.**
4. Submit your team's **SIGNED Code of Ethical Conduct form by Friday, September 17, 2021, to the Bar Foundation office.**
5. Submit your Time/Date Preference form and school activities calendar for October and November to the Regional Coordinator by Friday, September 17, 2021.

Rule 8. Team Composition

Teams may consist of a **minimum** of six (6) and a **maximum** of ten (10) students. Only these official team members may be assigned to an attorney, witness or a timekeeper role

representing the prosecution/plaintiff and defense/defendant sides. The duties of the alternate team members may be assigned at the discretion of the coaches. One of the official team members shall serve as a timekeeper.

Students may only participate on one team per school year.

Rule 9. Team Presentation

Teams must be prepared to present both the Prosecution/Plaintiff and Defense/Defendant sides of the case, using **SIX (6)** team members per trial. For each trial, teams shall use three (3) students as attorneys and three (3) students as witnesses.

Rule 10. Team Duties

Each of the three (3) attorneys shall conduct one direct examination and one cross-examination. In addition, one attorney shall present the opening statement and a different attorney shall present the closing argument.

Opening and Closing Statements must be given by both sides unless there are technical difficulties. See Emergencies.

The attorney who will cross-examine a particular witness is the only one permitted to make objections during the direct examination of that witness. The attorney who questions a particular witness on direct examination is the only person who may make objections during cross-examination of that witness.

Each team must call three (3) witnesses. Witnesses shall be called only by their own team. Witnesses shall be examined by both teams. Witnesses may not be recalled by either team.

In a virtual competition, students will be directed to display screen names according to the following protocol:

- School code – assigned by the Bar Foundation
- Side of case team is portraying (P or D)
- Attorney – Atty – first or last name (easy for competing team to pronounce)
- Witness – Wit – first initial and last name
- Timekeeper – TK – last name
- Examples - 301 (P) Atty Jones or 301 (D) Wit, J. Smith or 301 (D) TK

In a virtual competition, judges will be directed to display screen names according to the following protocol:

- Presiding judge
- Scoring judge 1
- Scoring judge 2

Rule 11. Swearing in of Witnesses

All witnesses will be deemed to be sworn in during a virtual competition.

"All witnesses promise that the testimony given will faithfully and truthfully conform to the facts and rules of the Mock Trial Competition."

Rule 12. Trial Sequence and Time Limits

The trial sequence shall be as follows:

1. Prosecution/Plaintiff's opening statement
2. Defense's opening statement
3. Prosecution/Plaintiff's direct examination and Defense's cross-examination of Prosecution/Plaintiff's three (3) witnesses
4. Defense's direct examination and Prosecution/Plaintiff's cross-examination of Defense's three (3) witnesses
5. Prosecution/Plaintiff's closing argument
6. Defense's closing argument
7. Prosecution/Plaintiff may reserve a portion of its closing argument time for rebuttal if it does so at the beginning of its closing argument. The Prosecution/Plaintiff's rebuttal, if any, is limited to the scope of the Defense's closing argument.

Time Limits

1. Each team shall have a total of 10 minutes for the Opening Statement and Closing Argument. For example, a 3-minute opening and a 7-minute closing.
2. Each team shall have a total of 25 minutes for Direct and Re-direct Examination.
3. Each team shall have a total of 20 minutes for Cross and Re-cross Examination.

Attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial, except as allowed by this rule.

Rule 13. Timekeeping

Time limits are mandatory and shall be enforced by the presiding judge. Time for objections or extensive questioning from the judge shall NOT be counted as part of a team's allotted time. Time does not stop for introduction of exhibits. Each team shall have its own timekeeper.

Timekeepers are responsible for fairly and accurately keeping, reporting, and recording the time for all participants during the trial presentation. Each team's timekeeper(s) may hold up timecards. Timecards can be found on the Bar Foundation website <https://www.nebarfnd.org/civics-education/mock-trial>

During a virtual competition, before and/or after each trial segment, the timekeepers shall confer using the "chat" or similar feature regarding how much time remains for each team. Please ask the presiding judge what the preference is regarding displaying the timecard on the screen or using the chat feature of Zoom or both.

- a. If a team has only six (6) official members, it must designate one (1) or more of its witnesses to serve as a timekeeper in each round.
- b. The timekeepers must signal time by posting the time signals in the chatroom function of the virtual competition platform and or displaying Time Remaining cards by activating their cameras.

- c. Students keeping time may use stopwatches or cellular phones. Any cellular phone used for timekeeping shall be kept in airplane mode and silenced during the duration of the trial round.

No time disputes will be entertained after the trial concludes. The decisions of the presiding judge regarding the resolution of time disputes are final except for Rule 22.

Rule 14. Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the presiding judge, the scoring judges may determine individually whether to deduct points because of the overrun in time.

Rule 15. Prohibited Motions

The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission. Other motions, for example, a motion for directed verdict, acquittal, or dismissal of the case at the end of the Plaintiff's case may not be used. **A motion for a recess may be used only in the event of an emergency.** Should a recess be called, team members are to remain in place and shall not communicate with any coaches or observers regarding the trial.

Rule 16. Sequestration

Teams may not invoke the rule of sequestration of witnesses (exclusion of witnesses from the courtroom).

Rule 17. Bench Conferences

Bench conferences are not permitted in either in-person or virtual competitions. Objections are deemed to have occurred at sidebar.

Rule 18. Supplemental Material/Illustrative Aids

During the trial, teams may refer only to materials included in the Mock Trial case packet. No physical evidence, illustrative aids, enlargements, props, or costumes are permitted unless authorized specifically by the State Coordinator. An accent is not considered costuming.

No exhibits may be modified before trial. An exception to this Rule is if a student has a visual impairment. Please see Rule 41.

Rule 19. Trial Communication

A. Team Members

Team members are defined as the three (3) student attorneys, three (3) student witnesses and up to four (4) alternates, which include the timekeeper(s). During the trial, the participating team members may use computers, cellular telephones, or other devices to facilitate communication among themselves. Non-participating alternates who are not serving as a timekeeper shall not talk to, signal, electronically communicate with, or coach their teams during trial.

It is prohibited for any team member to communicate with a witness while that witness is testifying other than through the course of that witness's questioning. Disruptive communication is not allowed.

Signaling of time by the team's timekeeper(s) shall not be considered a violation of this Rule. Refer to Rule 13.

During the trial, communication of any kind between any team member and a teacher and or attorney coach is prohibited. The only communication exception is one between a teacher or attorney coach and a student, who is experiencing technical difficulties during the virtual trial.

B. Coaches

Teacher coaches and attorney coaches shall not talk to, signal, electronically communicate with, or coach their teams during trial.

This Rule remains in force during any emergency recess.

Rule 20. Viewing a Trial

Regional Competition and State Championship

1. Only the Official Team Members plus the teacher and attorney coaches may view that team's trials.
2. All coaches shall turn off their cameras and mute the audio on all electronic devices. Videotaping or audio recording is prohibited by any team member, the teacher and the attorney coach.
3. It is prohibited for team members and anyone affiliated with a specific team to contact students, teacher and attorney coaches from any other team in any manner to obtain information about an opponent. This prohibition includes, without limitation, any form of personal communication, voice/telephone communication, and/or electronic communication, including electronic mail, instant messaging and communication or messaging through social media sites.
4. No scouting.

Rule 21. Videotaping/Photography

Regional Trials -- See Rule 20.

Regional & State Championship – All trials will be recorded and stored on a virtual platform (Zoom). Refer to Rule 24. A video release form must be completed for each student to compete. A link will be sent to teachers to forward to parents/guardians to complete.

A school student photographer from either team may be allowed to take photos if agreed to by both teams. Videotaping or audio recording is prohibited.

At the conclusion of the Mock Trial season, a teacher coach may request the links of the trials that their team competed in. Please complete the form on the Foundation website.

<https://www.nebarfnd.org/civics-education/mock-trial>

Due to school district privacy regulations, there can be no video or audio recording done except by the Bar Foundation. If any team records, posts or shares a video recording, this team shall be disqualified from the Regional and State competitions for the school year.

Rule 22. Post-Trial Objection

Appeals are not permitted *per se*; however, any errors/violations are handled in the following manner:

- A. After closing arguments are completed, the presiding judge will ask, *“Does either team have serious reason to believe that a material violation of any rule has occurred during this trial? I will allow up to three (3) minutes, during which time any protest or objection may be brought to my attention by a team attorney. The team attorneys may communicate only with performing team members (witnesses and timekeeper) involved in this round. Team attorneys shall not communicate in any way with the teacher and/or attorney coaches.”*

1: Motions for directed verdict or dismissal of the case are not permitted.

2: Objections that could have been raised during the trial, including evidentiary objections, may not be raised at this time.

If there is an objection, then one of the team attorneys will state the objection(s) and the grounds for it. The judge shall solicit a response from the other team and/or inquire further into the facts. All objections shall be made before the presiding judge concludes the virtual trial.

The presiding judge does not announce a finding. The presiding judge and the scoring judges may consult with each other after the virtual trial has concluded.

- B. If neither team has any Post Trial Objection, then the three-minute limit may be waived by unanimous consent. The presiding judge will then conclude the virtual trial.
- C. Material Rule Violation - If a majority of the judging panel determines that there has been a material violation of the competition rules that affected the fairness of the trial, five (5) points shall be deducted from the offending team’s total score on each scoresheet. An example of a material rule violation would be a team going over its time limit for closing arguments by more than 15 seconds without prior permission of the presiding judge.
- D. Gross Rule Violation - In the event the team raises a violation that the majority of the judging panel believes is more serious than a five-point violation, the student attorneys are asked to verbally describe the issue in as much written detail as possible on the Gross Rule Violation Form. The Gross Rule Violation Form is included in the Case Materials and on the Bar Foundation website. An example of a gross rule violation would be communication between team members and their teacher or attorney coach, whether through signals, notes, or electronically.

Gross Rule Violations are referred to the **Nebraska State Bar Foundation’s Mock Trial Commission**, which is comprised of seven Mock Trial volunteers (no active attorney

coaches). The Commission is sent all of the details, and asked to construct an appropriate remedy, up to and including disqualification.

E. ALL DECISIONS FROM THIS PROCESS ARE FINAL AND NOT SUBJECT TO ANY FURTHER APPEAL.

F. Power Matching is not subject to any appeal.

D. JUDGING

Rule 23. Decisions

All decisions of the judging panel are **FINAL** with the exception of a violation that falls under Rule 22.

Rule 24. Composition of Judging Panel

The volunteer judging panel shall consist of one presiding judge and two scoring judges, all of whom shall complete an individual score sheet. No trial shall proceed without three (3) volunteer judges, unless one volunteer judge is unavoidably, unexpectedly absent.

If a technical or other emergency impacts the presiding judge, a designated scoring judge will serve as the presiding judge.

If one volunteer judge is unavoidably, unexpectedly absent, the other two (2) judges may proceed to score the trial. The Bar Foundation recording of this specific trial will be viewed by the absent volunteer judge and scored; therefore, this trial will have three (3) ballots.

If a volunteer judge is absent or unable to return to the virtual competition platform in a reasonably short period of time, contact the State Coordinator/Bar Foundation staff.

The State Championship trial may have a panel of five to seven jurors (volunteer Mock Trial judges) at the discretion of the State Coordinator.

During any recess under this Rule, the teams, whenever possible, should remain in their appropriate positions within the virtual competition platform until the round resumes.

Rule 25. Score Sheets/Ballots

The term "ballot" refers to the score sheets and the decision made by a presiding or scoring judge as to which team made the best presentation in the trial. The term "score sheet" is the form on which team points are recorded. Score sheets are to be completed individually by all three (3) judges. Scoring judges are **not** bound by the rulings of the presiding judge. The team that earns the highest points on an individual performance judge's score sheet is the winner of that ballot. The team that receives the majority of the three (3) ballots wins the trial.

Teams will receive copies of the score sheets at the conclusion of the Regional Competition.

During the State Championship, Nebraska follows the National High School Mock Trial Championship Power Matching as modified for the 12 teams participating at State. Power Matching considers the following: 1) win/loss record, 2) number of ballots received for each trial and 3) cumulative points. Teams will receive copies of their score sheets at the conclusion of the State Championship.

Rule 26. Courtroom Decorum

Mock Trials are meant to simulate real trials. Participants should act and dress accordingly.

Rule 27. Pre-trial Conferences

Each virtual Mock Trial should begin with a pretrial conference. Mock Trial student attorneys may ask the presiding judge to clarify Rules of Procedure or Rules of Evidence.

E. DISPUTE RESOLUTION

Rule 28. Reporting a Rule Violation/Inside the Bar

Alleged Rule violations that involve students competing in a trial and occur during the trial should be brought to the attention of the presiding judge by a student attorney through an objection at the time of the alleged violation. **The presiding judge shall rule on the objection and the trial shall continue.**

During this process, all communication between the team members and the teacher and or attorney coach is prohibited.

Rule 29. Reporting of Alleged Rule Violation /Outside the Bar

Disputes that involve people other than student team members and occur outside the bar during a trial round may be brought exclusively by the teacher or attorney coaches. Such disputes must be made promptly to the appropriate Regional Coordinator and State Coordinator who will ask the complaining party to complete a Dispute Resolution Form. The completed form will be emailed to the Regional Coordinator and State Coordinator. The State Coordinator will then a) notify all pertinent parties; b) allow time for a response, if appropriate; and c) rule on the complaint. The State Coordinator will notify all pertinent parties of the decision.

II. RULES OF PROCEDURE

The Nebraska Rules of Procedure are based on the Rules of the National High School Mock Trial Competition.

A. BEFORE THE TRIAL

The Bar Foundation will schedule the Regional trials once the Date/Time Preference Form is completed by the individual teams. A total of twelve (12) teams will compete at the State Championship.

Rule 30. Courtroom Setting

For a virtual competition, each participant will log into the virtual platform (Zoom) individually from a personal computer, tablet, cellular phone, or similar device. At a minimum, each participating attorney, witness, and timekeeper shall use an individual device. Each participant must use the team code and screen name format as stipulated in Rule 10.

Teams may participate in one room in a district approved building. Participants shall mute the audio when not speaking.

Once the trial begins, only participants who are competing in a particular trial segment will have their camera turned on. All team members who are not actively participating in that trial segment may have their cameras turned off, except for timekeepers turning on their cameras to display remaining time consistent with Rule 13. For purposes of this Rule, the witness, direct-examining attorney, and cross-examining attorney must have their cameras turned on for the entire witness examination.

Rule 31. Team Roster

The Team Roster form must identify the gender of each witness so that references to such parties must be made using the preferred pronoun. A copy of the Team Roster shall be electronically provided to the State Coordinator at the start of the Regional Competition and become official at 5:00 p.m. CDT two days before any round of a virtual competition. Each participating team and all volunteer judges will receive an electronic Team Roster of the competing team before every trial.

Rule 32. Stipulations

The attorney assigned the Prosecution/Plaintiff's opening statement shall offer any stipulations into evidence before beginning the opening statement.

Rule 33. The Record

The stipulations, indictment and charge to the jury shall not be read into the record.

B. BEGINNING THE TRIAL

Rule 34. Jury Trial

The case shall be tried to a jury; arguments are to be made to judge and jury. Teams may address the scoring judges as the jury. The scoring judges will have their video turned off and audio muted. The presiding judge shall have both the camera and audio on.

Rule 35. Standing During Trial

All student attorneys may stand when addressing the court or the jury, including opening statements and closing arguments. Attorneys shall sit for direct and cross-examinations and for making objections.

An attorney's device (computer, tablet, phone, etc.) used for the trial must be stationary/static with the appropriate angle in the event the attorney moves during opening or closing statements. Consideration should be given to the distance of the device and where the attorney is seated/standing. Consideration should be given to the microphone placement so that the attorney can be heard if s/he moves around during the trial.

Witnesses shall be seated for their direct and cross-examinations. Please position your camera so that you are seen from the waist up, as you would be if seated in-person in a court room. Witnesses are prohibited from using notes (paper or electronic) during their examination.

During a virtual trial, the witness statements may be in a folder in front of the witness. If an attorney refers to the witness statement, then the witness may access the folder for that

specific witness statement. Once the question regarding the witness statement is answered, the statement shall be placed back in the folder and the folder closed.

Rule 36. Objection During Opening Statement/Closing Argument

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

If a team believes an objection would have been proper during the opposing team's closing argument, then following the closing argument, one of its attorneys may ask to be recognized by the judge. The attorney may say, "If I had been permitted to object during closing arguments, I would have objected to the opposing team's statement that _____." The presiding judge shall not rule on this "objection." Judges shall weigh the "objection" individually for purposes of determining their scores. No rebuttal by opposing team shall be heard.

Rule 37. Filibustering or Deliberate Time Wasting

A witness may be permitted to give a brief, responsive answer other than a simple "yes" or "no" to questions on cross-examination, consistent with common trial practice. No witness may provide non-responsive or narrative answers on cross-examination in order to consume the other team's cross-examination time. The presiding judge is encouraged to control any effort at marginally responsive, narrative "filibustering" or "deliberate time wasting."

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 before moving for the admission of evidence. After motion has been made, the exhibits may still be objected to on other grounds.

Rule 40. Procedure for Introduction of Exhibits

As an example, the following steps effectively introduce evidence during a virtual trial.

1. All evidence shall be pre-marked as exhibits. Attorneys will not be required to confirm that they have shown the exhibit to opposing counsel.
2. All witnesses shall have all case materials available and in their possession during their testimony, however, may only refer to the case materials when prompted by an examining attorney.
3. Attorneys will identify the exhibit by number and request the Court's permission for the witness to view it. All exhibits shall be in a folder in front of the witness. If a witness is questioned by an attorney about a specific exhibit, the witness may access the folder and refer to that specific exhibit.
4. The attorney will state a phrase to the effect of "I now refer to what has been marked for identification as Exhibit No. _____. Would you identify it please?" Witness should only answer to identify it.
5. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. ___ into evidence at this time. The authenticity of this exhibit has been stipulated."

6. Presiding Judge: "Is there an objection?"
If proper foundation has not been laid, opposing counsel should object at this time.
7. Opposing Counsel: "No, your Honor," or "Yes, your Honor proper foundation has not been laid for Exhibit No. ___."
8. Presiding Judge: "Is there any response to the objection?"
9. Presiding Judge: "Exhibit No. __ is/is not admitted."
10. Exhibits or other documents will be deemed not to have been shown to the jury unless they are admitted into evidence and formally published to the jury. Publication to the jury is at the presiding judge's discretion.
11. The judging panel will receive the Case Materials, which includes all exhibits, before the trial.

Rule 41. Use of Notes/Exhibits

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 through the use of electronic notes as permitted by Rule 19.

Exhibits may not be enhanced or enlarged without permission from the State Coordinator. No protective covering (i.e. lamination) of paper exhibits is allowed.

Rule 42. Re-direct/Re-cross

Re-direct and re-cross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Federal Rules of Evidence (Mock Trial Version). Re-redirect and re-recross examination are **not** allowed.

D. CLOSING ARGUMENTS

Rule 43. Scope of Closing Arguments

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

E. WRITTEN FEEDBACK

Rule 44. Optional Feedback Form for Volunteer Judges

Judges may provide additional feedback on their scoresheet.

Judges shall **not** inform the students of the score sheet results.

Rule 45. Proposed Suggestion Form for Teacher and Attorney Coaches

The Proposed Suggestion Form can be found in the Case Materials and on the Bar Foundation website. This is only available to teacher and/or attorney coaches. This form must be submitted to the Nebraska State Bar Foundation's Executive Director. Coaches should describe the proposed suggestion in a maximum of 100 words. The suggestion(s) will be carefully considered and brought before the Mock Trial Commission. Based upon the Commission's recommendation, the suggestion will be accepted or denied. All suggested Rule changes will most likely be considered over the summer.

III. FEDERAL RULES OF EVIDENCE (Mock Trial Version)

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

For purposes of mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence 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 Nebraska High School Mock Trial Rules of Evidence govern Nebraska High School Mock Trial competition.

ARTICLE I. GENERAL PROVISIONS

Rule 101. Scope

These National High School Mock Trial Rules of Evidence govern the trial proceedings of the National High School Mock Trial Championship.

Rule 102. Purpose and Construction

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

Rule 402. General Admissibility of Relevant Evidence

Relevant evidence is admissible unless these rules provide otherwise. Irrelevant evidence is not admissible.

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, or Waste of Time or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 404. Character Evidence; Crimes or Other Acts

- (a) Character Evidence.
 - (1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.
 - (2) Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case:
 - (A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;
 - (B) a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:
 - (i) offer evidence to rebut it; and
 - (ii) offer evidence of the defendant's same trait; and
 - (C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.
 - (3) Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 607, 608, and 609.
- (b) Crimes, Wrongs, or Other Acts.
 - (1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
 - (2) Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Rule 405. Methods of Proving Character

- (a) **By Reputation or Opinion.** When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness,

the court may allow an inquiry into relevant specific instances of the person's conduct.

- (b) **By Specific Instances of Conduct.** When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

Rule 406. Habit, Routine Practice

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

Rule 407. Subsequent Remedial Measures

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or — if disputed — proving ownership, control, or the feasibility of precautionary measures.

Rule 408. Compromise Offers and Negotiations

- (a) **Prohibited Uses.** Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:
- (1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim; and
 - (2) conduct or a statement made during compromise negotiations about the claim — except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.
- (b) **Exceptions.** The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Offers to Pay Medical and Similar Expenses

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

Rule 410. Pleas, Plea Discussions, and Related Statements

- (a) **Prohibited Uses.** In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:
 - (1) a guilty plea that was later withdrawn;
 - (2) a nolo contendere plea;
 - (3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
 - (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.
- (b) **Exceptions.** The court may admit a statement described in Rule 410(a)(3) or (4):
 - (1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or
 - (2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

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

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or proving agency, ownership, or control.

ARTICLE V. PRIVILEGES

Rule 501. General Rule

There are certain admissions and communications excluded from evidence on grounds of public policy. Among these are:

- (1) *communications between husband and wife;*
- (2) *communications between attorney and client;*
- (3) *communications among grand jurors;*
- (4) *secrets of state; and*
- (5) *communications between psychiatrist and patient.*

ARTICLE VI. WITNESSES

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal

knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703. (*See Rule 2.2*)

Rule 607. Who May Impeach A Witness

Any party, including the party that called the witness, may attack the witness's credibility.

Rule 608. A Witness's Character For Truthfulness or Untruthfulness

- (a) **Reputation or Opinion Evidence.** A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.
- (b) **Specific Instances of Conduct.** Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:
 - (1) the witness; or
 - (2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

Rule 609. Impeachment by Evidence of a Criminal Conviction

- (a) **In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:
 - (1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
 - (A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and
 - (B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and
 - (2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement.
- (b) **Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.

- (c) **Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:
 - (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or
 - (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.
- (d) **Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:
 - (1) it is offered in a criminal case;
 - (2) the adjudication was of a witness other than the defendant;
 - (3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and
 - (4) admitting the evidence is necessary to fairly determine guilt or innocence.
- (e) **Pendency of an Appeal.** A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

Rule 610. Religious Beliefs or Opinions

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

Rule 611. Mode and Order of Interrogation and Presentation

- (a) **Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
 - (1) make those procedures effective for determining the truth;
 - (2) avoid wasting time; and
 - (3) protect witnesses from harassment or undue embarrassment.
- (b) **Scope of cross examination.** The scope of the cross examination shall not be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement, **including** all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material and admissible.
- (c) **Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:
 - (1) on cross-examination; and
 - (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.
- (d) **Redirect/Re-cross.** After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross examination. Likewise, additional questions may be asked by

the cross-examining attorney or re-cross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.

- (e) **Permitted Motions.** The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission.

Rule 612. Writing Used to Refresh a Witness’s Memory

If a written statement is used to refresh the memory of a witness either while testifying or before testifying, the Court shall determine that the adverse party is entitled to have the writing produced for inspection. The adverse party may cross examine the witness on the material and introduce into evidence those portions, which relate to the testimony of the witness.

Rule 613. Witness’s Prior Statement

- (a) **Showing or Disclosing the Statement During Examination.** When examining a witness about the witness’s prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party’s attorney.
- (b) **Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness’s prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party’s statement under Rule 801(d)(2).

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witness

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness’s perception;
- (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Rule 702. Testimony by Experts

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

Rule 703. Bases of an Expert’s Opinion Testimony

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be

admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

Rule 704. Opinion on Ultimate Issue

- (a) **In General — Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue.
- (b) **Exception.** In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

Rule 705. Disclosing the Facts or Data Underlying An Expert’s Opinion

Unless the court orders otherwise, an expert may state an opinion — and give the reasons for it — without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

ARTICLE VIII. HEARSAY

Rule 801. Definitions

The following definitions apply under this article:

- (a) **Statement.** “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
- (b) **Declarant.** “Declarant” means the person who made the statement.
- (c) **Hearsay.** “Hearsay” means a statement that:
 - (1) the declarant does not make while testifying at the current trial or hearing; and
 - (2) a party offers in evidence to prove the truth of the matter asserted in the statement.
- (d) **Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:
 - (1) **A Declarant-Witness’s Prior Statement.** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
 - (A) is inconsistent with the declarant’s testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
 - (B) is consistent with the declarant’s testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
 - (C) identifies a person as someone the declarant perceived earlier.
 - (2) **An Opposing Party’s Statement.** The statement is offered against an opposing party and:
 - (A) was made by the party in an individual or representative capacity;
 - (B) is one the party manifested that it adopted or believed to be true;

- (C) was made by a person whom the party authorized to make a statement on the subject;
- (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
- (E) was made by the party's coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant's authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these Rules.

Rule 803. Exceptions to the Rule Against Hearsay – Regardless of Whether the Declarant is Available as a Witness

The following are not excluded by the hearsay rule, regardless of whether the declarant is available as a witness:

- (1) **Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.
- (2) **Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.
- (3) **Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.
- (4) **Statement Made for Medical Diagnosis or Treatment.** A statement that:
 - (a) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and
 - (b) describes medical history; past or present symptoms or sensations; their inception; or their general cause.
- (5) **Recorded Recollection.** A record that:
 - (a) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;
 - (b) was made or adopted by the witness when the matter was fresh in the witness's memory; and
 - (c) accurately reflects the witness's knowledge.If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.
- (6) **Records of Regularly Conducted Activity.** A record of an act, event, condition, opinion, or diagnosis if:
 - (a) the record was made at or near the time by — or from information transmitted by — someone with knowledge;

- (b) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
 - (c) making the record was a regular practice of that activity;
 - (d) all these conditions are shown by the testimony of the custodian or another qualified witness; and
 - (e) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.
- (7) **Absence of Regularly Conducted Activity.** Evidence that a matter is not included in a record described in paragraph (6) if:
- (a) the evidence is admitted to prove that the matter did not occur or exist;
 - (b) a record was regularly kept for a matter of that kind; and
 - (c) the opponent does not show that the possible source of information or other indicated a lack of trustworthiness.
- (8) **Public Records.** A record or statement of a public office if:
- (a) it sets out:
 - (i) the offices activities;
 - (ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law enforcement personal; or
 - (iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and
 - (b) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.
- (10) **Absence of a Public Record.** Testimony that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:
- (a) the record or statement does not exist; or
 - (b) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.
- (16) **Statements in Ancient Documents.** A statement in a document that is at least 20 years old and whose authenticity is established.
- (18) **Statements in Learned Treatises, Periodicals, or Pamphlets.** A statement contained in a treatise, periodical, or pamphlet if:
- (a) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
 - (b) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.
- If admitted, the statement may be read into evidence but not received as an exhibit.
- (21) **Reputation Concerning Character.** A reputation among a person's associates or in the community concerning the person's character.
- (22) **Judgment of a Previous Conviction.** Evidence of a final judgment of conviction if:
- (a) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;
 - (b) the conviction was for a crime punishable by death or by imprisonment for more than a year;
 - (c) the evidence is admitted to prove any fact essential to the judgment; and

- (d) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

Rule 804. Hearsay Exceptions, Declarant Unavailable

- (a) **Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant:
 - (1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
 - (2) refuses to testify about the subject matter despite a court order to do so;
 - (3) testifies to not remembering the subject matter;
 - (4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
 - (5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:
 - (A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or
 - (B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

- (b) **The Exceptions.** The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:
 - (1) **Former Testimony.** Testimony that:
 - (A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and
 - (B) is now offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.
 - (2) **Statement Under the Belief of Imminent Death.** In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.
 - (3) **Statement Against Interest.** A statement that:
 - (A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and
 - (B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

- (4) **Statement of Personal or Family History.** A statement about:
 - (A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or
 - (B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.
- (5) **Not Applicable**
- (6) **Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.** A statement offered against a party that wrongfully caused — or acquiesced in wrongfully causing — the declarant's unavailability as a witness, and did so intending that result.

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

ARTICLE XI. OTHER

Rule 1103. Title

These rules may be known and cited as the Nebraska High School Mock Trial Federal Rules of Evidence.