

## **UTAH SIMPLIFIED MOCK TRIAL RULES OF EVIDENCE**

For purposes of the mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the National High School Rules and 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.***

These rules govern the admission of evidence in Mock Trials. 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, the rule and number) and to argue persuasively for the interpretation and application of the rule they think appropriate.

### **Article I. General Provisions**

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

These Simplified Mock Trial Rules of Evidence govern the trial proceedings of the Mock Trial Program.

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

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

### **Article IV. Relevancy and its Limits**

#### **Rule 401. Definition of "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 matters in determining the action.

#### **Rule 402. General Admissibility of Relevant Evidence**

Relevant evidence is admissible, except as otherwise provided in these rules. Irrelevant evidence is not admissible.

#### **Rule 403. Exclusion of Relevant Evidence for Prejudice, Confusion, or Waste of Time, or Other Reasons. [NEW to UTAH]**

The Court may exclude relevant evidence if its value in the trial is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the finder of fact, wasting time, or needlessly presenting cumulative evidence.

#### **Rule 404. Character Evidence; Crimes or 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) **Exception.** A Defendant may offer evidence of the defendant's character trait, and the prosecution may introduce evidence to rebut that evidence.

(3) **Exception for witnesses.** Evidence of a witness' character may be admitted under Rule 608.

**(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 406. Habit; Routine Practice**

Evidence of a person's habit or an organization's routine practice is not excluded by Rule 404(a).

**Article V. Privileges**

**Rule 501. General Rule**

(a) The following communications, when made during circumstances which the parties had a reasonable expectation of privacy, are privileged, and the contents of the communications may not be compelled:

- (1) Between a husband and a wife;
- (2) Between a cleric and a parishioner;
- (3) Between an attorney and her client; and
- (4) Between a psychiatrist and a patient.

(b) If any privileged communications are voluntarily disclosed, the witness may be cross-examined regarding the substance of the communication.

**Article VI. Witnesses**

**Rule 601. General Rule of Competency**

Every person is competent to be a witness.

**Rule 602. Need for Personal Knowledge**

Unless the person is an expert witness and providing an opinion pursuant to Rule 703, a

witness may not testify to a matter unless the witness has personal knowledge of the matter.

**Rule 607. Who may Impeach** (i.e., **show that a witness should not be believed**)

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

**Rule 608. Impeachment Evidence**

(a) A party may impeach the witness by eliciting evidence of:

- (1) An opinion relating to the issue of the witness' credibility (truth-telling ability).
- (2) Convictions of crimes punishable by more than one year in prison, so long as the conviction occurred within the last 10 years or was related to a crime of dishonesty or a false statement.
- (3) A prior inconsistent statement made in a statement in the proceeding.

(b) Impeachment evidence may be introduced in the form of reputation, opinion, or reference to specific instances of conduct, but its admissibility is subject to the other Rules of Evidence. [New, but implied in our rules, and different from URE and FRE.]

(c) The credibility of a witness may be attacked through evidence demonstrating the witness' bias, motive, or interest to testify in the way the witness has testified.

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

**Rule 609. Impeachment by Evidence of a Criminal Conviction**

Convictions of crimes punishable by more than one year in prison, so long as the conviction occurred within the last 10 years or was related to a crime of dishonesty or a false statement.

**Rule 610. Religious Beliefs or Opinions**

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

**Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence**

(a) **Control by Court.** The Court may exercise control over the manner of examination, as provided by the Rules of the Competition. The Court shall not permit argumentative or unduly repetitive examinations, and all examination shall proceed in a question-and-answer format.

(b) **Scope of Examinations.** Except as allowed by the Court, cross-examination may include the subject matter of direct testimony as well as any relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those facts and matters. Redirect and recross examinations should be limited to the

scope of the immediately preceding examination.

(c) **Leading Questions.** Leading questions should not be used on direct or redirect examination except as otherwise necessary to develop the witness' testimony. Ordinarily, the Court should allow leading questions on cross- and recross examination.

### **Rule 612. Writing Used to Refresh Memory**

If a witness is unable to recall a statement made in a previous writing, it may be provided to the witness while testifying. The previous written statement is not itself evidence and need not be entered into evidence, but the adverse party may cross-examine the witness on the material.

### **Rule 614. Invention of Fact (Mock Trial only)**

(a) On Direct Examination. In answering a question on direct examination, a witness may not provide a fact not in the witness' statement and a fact which is likely to affect the outcome of the trial. The opposing party may object to such evidence.

(b) On Cross-Examination. [NEW] If a witness is asked about information on cross-examination 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.

(c) If a witness testifies contrary to the witness' statement, the examining attorney may attempt to refresh the witness' recollection, as provided by Rule 612, or impeach the witness, as provided by Rule 608.

## **Article VII. Opinions and Expert Testimony**

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

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

(a) rationally based on the perception of the witness;

(b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue; and

(c) not based on specialized or technical knowledge.

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

(a) A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion if:

(1) the expert's specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(2) the testimony is based on sufficient facts or data;

(3) the testimony is the product of reliable principles and methods; and

(4) the expert has reliably applied the principles and methods to the facts of the case.

(b) An attorney **shall not** ask the Court to qualify an expert in any particular field prior to offering an expert opinion. However, the opposing party may object to any opinion provided by an expert if the expert, or the opinion, does not conform to subsection (a).

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

The expert need not rely upon admissible facts to formulate the expert's opinion.

### **Rule 704. Opinion on Ultimate Issue**

Testimony from a witness about how the case is to be decided, including the guilt or innocence of a defendant, is not admissible. However, opinion or inference testimony otherwise admissible is not objectionable merely because it embraces an issue to be decided by the trier of fact.

### **Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion**

The expert may, on cross-examination, be asked about the facts underlying the opinion.

## **Article VIII. Hearsay**

**Rule 801. Definitions.** The following definitions apply:

(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) The prior statement of a declarant under oath or given in writing in the current proceeding.

(2) The statement of an opposing party (the Plaintiff in a civil case, or the Defendant in a criminal or civil case), or the party's agent or employee, if acting on behalf of the party.

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

Hearsay is not admissible, except as provided by these rules.

### **Rule 803. Hearsay Exceptions**

The following are not excluded by rule against hearsay:

(a) **[Not applicable]**

(b) **Excited utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

(c) Then existing mental, emotional, or physical condition. A statement of the declarant's then-existing state of mind, or emotional, sensory, or physical condition, but not including a statement of memory or belief to prove the fact remembered.

(d) **Statements for purposes of medical diagnosis or treatment.** A statement that is made for--and is reasonably pertinent to--medical diagnosis or treatment; and describes medical history, symptoms, or the causes of the symptoms.

(e) **[Not applicable]**

(f) **Records of regularly conducted activity.** A memorandum, or other record if made at or near the time by, or from information transmitted by, a person with knowledge, kept in the course of a regularly conducted activity of business.

(g) **[Not applicable]**

(h) **Statements in Learned Treatises, Periodicals, or Pamphlets.** A statement in a treatise, periodical, or pamphlet, if the statement is called to the attention of an expert witness on cross-examination, if the expert establishes the authority as reliable

(i) **[Not applicable]**

(j) **Judgment of previous conviction.** Evidence of a judgment finding a person guilty of a crime, if properly used to impeach the witness.

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

(b) **The Exceptions.** The following are not excluded by the hearsay rule 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 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, marriage, divorce, legitimacy, relationship by blood, adoption or marriage, ancestry, or other similar fact of personal or family history, even though 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 within hearsay is not excluded by the rule against hearsay if each party of the combined statements conforms with an exclusion or exception to the rule.

### **Rule 901. Authentication and Identification**

A witness is prohibited from denying the authenticity of any complete, unaltered, case material.

### **Rule 1003. Contents of Writing, Recordings and Photographs**

A complete, unaltered duplicate writing, recording, or photograph is admissible to the same extent as an original.

## **ARTICLE XI. Other**

### **Rule 1103. Title.**

These rules may be known and cited as the Utah Simplified Mock Trial Rules of Evidence.