

Dakota Stark v Springs Park - Rules of Competition, Rules of Evidence and Exhibits

In mock trial, we use our own Rules of Evidence that are patterned after the Federal Rules of Evidence. We also have Rules of Competition that have a few applications as to how evidence is presented as well. They can be found here:

<https://ncmocktrial.org/wp-content/uploads/2024/09/2024-2025-Rules-of-Competition-09.06.2024-1.pdf?x49076>

We suggest that you read through pages 18-27 of this resource for Team Leaders as a complement to what is discussed in the video training:

<https://ncmocktrial.org/wp-content/uploads/2021/11/NCMTP-Mock-Trial-TEAM-LEADER-Resource-Manual-.pdf>

Here are some selected Rules of Competition and Rules of Evidence that relate to presenting evidence at trial (witness testimony and/or introducing exhibits). These are not all the rules.

Rules of Competition (Selected)

From page 18 of the Team Leader Manual mentioned above:

Key Rules ** Students are limited to the case materials. No outside resources are permitted to be used in competition, although students could consult other resources to help them understand case concepts during their preparations. Any such resources cannot be used or referenced in trial.

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1. Witnesses are bound by facts of their statements (Rule 3.4). They cannot invent material facts, nor can they deny knowledge of facts which are in their specific affidavits. Any invented fact must be neutral.
2. The use of notes by witnesses is not permitted during trial rounds (Rule 4.10.a).
3. Stipulations are considered admitted into evidence – no reading of stipulations into the record is allowed (Rule 4.12).
4. Students are NOT allowed to wear costumes or enlarge the provided 8.5”x11” exhibits (Rule 3.3).
5. Time does NOT stop during the introduction of exhibits (Rule 4.7.e).
6. Time DOES stop during objections (Rule 4.7.d).
7. At Regionals, attorneys are permitted to move around the courtroom only during opening statements and closing arguments (Rule 4.8). At State Finals, attorneys are also permitted to move about the courtroom during direct examination and cross-examination with the permission of the Presiding Judge.

There are many more rules of competition that relate to everything from the number of members on a team to the way power matching is done.

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Rules of Evidence (Selected)

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

Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, 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.

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Rule 404. (This can be a complicated rule)

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.

(3) Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 607, 608 and 609.

(b) Other 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; Notice in a Criminal Case. 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. (There are more rules here that relate to criminal defendants)

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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 411. Liability Insurance

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 prejudice or proving agency, ownership, or control.

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.

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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 611. Mode and Order of Examining Witnesses and Presenting Evidence

(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.

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(b) Scope of cross-examination. The scope of 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's 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/Recross. After cross-examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the other attorney on cross examination. Likewise, additional questions may be asked by the cross-examining attorney on re cross, but such questions must be limited to matters raised on redirect and should avoid repetition.

(e) Motions - not included here

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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 not included here

Rule 701. Opinion Testimony by Lay Witnesses

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 Expert Witnesses

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

(a) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) The testimony is based on sufficient facts or data.

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

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

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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 an Ultimate Issue

(a) In General, Not Automatically Objectionable. An expert opinion is not objectionable just because it embraces an ultimate issue to be decided by the trier of fact.

(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.

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Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay 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 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) Not included

(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

NOTE: Stipulation 10 - Sidney Wilson is the sole owner and operator of Springs Park, Inc. Therefore, any acts by Jordan Banner, an employee under Wilson’s authority as owner and manager of Springs Park, are considered acts of the Defendant.

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Rule 802. The Rule Against Hearsay

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

Rule 803. Exceptions to the Rule Against Hearsay

The following are not excluded by the rule against hearsay, 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.

(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.

(6) Records of a 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

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(E) The opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

(7) Public Records. A record or statement of a public office if:

(A) It sets out:

(i) The office's activities;

(ii) Matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; 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 source of information or other circumstances indicate a lack of trustworthiness.

Rule 805. Hearsay within Hearsay

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

Rule 807. Residual Exception

Under the following conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not admissible under a hearsay exception in Rule 803 or 804:

(1) The statement is supported by sufficient guarantees of trustworthiness, after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and (2) It is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts.

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Exhibits**

1. In order to introduce an exhibit in mock trial, you must use a witness who is familiar with the exhibit.
2. Stipulation 9 - Witnesses who reference exhibits in their affidavits are familiar with the contents of the entire exhibit
3. Rule 4.10.e provides a general way for introducing exhibits, though this does not have to be followed exactly.

Rule 4.10.e. Exhibits. With proper foundation, exhibits may be entered on direct examination or cross-examination. For educational purposes, see the following steps to effectively introduce evidence:

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

ii. Ask for permission to approach the witness. "Your Honor, may I approach the witness with what has been marked for identification purposes as Exhibit No. ____?"

iii. Show the exhibit to opposing counsel.

iv. Ask the witness to identify the exhibit. "I now hand you what has been marked for identification as Exhibit No. _____. Would you identify it please?" Witness should answer to 15 identify only.

v. Ask the witness a series of questions that are offered for proof of the admissibility of the exhibit. These questions lay the foundation or predicate for admissibility, including questions of the relevance and materiality of the exhibit.

vi. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. ____ into evidence."

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

viii. Opposing Counsel: "No, Your Honor," OR "Yes, Your Honor." If the response is "yes", the objection will be stated for the record. Court: "Is there any response to the objection?"

ix. Court: "Exhibit No. ____ (is/is not) admitted." If admitted, questions on content may be asked.

x. If an exhibit is introduced into evidence, a team may publish it to the jury at the presiding

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4. Stipulation #4 - All exhibits included in the case materials are authentic and accurate copies of the originals. No objections to the authenticity of the exhibits will be entertained. Both parties retain the right to make objections to the exhibits other than to an exhibit's authenticity. The only exhibits to be used at the trial are those included in the case materials provided by the Utopia Bar.
5. Stipulation # 5 - The chain of custody of evidence may not be contested. Additionally, exhibits do not need to be introduced through a custodian of records.
6. When entering an exhibit, the clock is running. Plan wisely as to which exhibits you decide to use. Jurors generally like to see a team introduce AND use at least one exhibit in their case in chief.
7. In mock trial, one can also enter exhibits on cross examination not used solely for impeachment. (4.10.e)

EXHIBIT #1: Springs Park Injury Record **from January to June 2023**

- Witnesses - Sydney Wilson, Jordan Banner, Bailey Parker, Mills Barton
- If offered by Plaintiff against Defendant, could use 801(d)(2) as a party admission. If offered by Defendant, 803 (6) record of regularly conducted activity

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EXHIBIT #2: Springs Park Safety Rules Signage

- Witnesses - Sydney Wilson, Jordan Banner, Bailey Parker, Mills Barton, Dakota Stark, Robin Hill
- If offered by Plaintiff against Defendant, could use 801(d)(2) as a party admission. If offered by Defendant, offered to show what the rules are - notice to Plaintiff. Could also corroborate testimony of Sydney Wilson and Jordan Banner.

EXHIBIT #3: Springs Park Liability Waiver Form

- Witnesses - Sydney Wilson, Jordan Banner, Bailey Parker, Dakota Stark, Robin Hill (familiar with one like it)
- If offered by Plaintiff against Defendant, could use 801(d)(2) as a party admission. If offered by Defendant, shows the legal document/waiver agreed to by Plaintiff.

EXHIBIT #4: 911 Transcript from April 22, 2023

- Witnesses - Sydney Wilson, Jordan Banner, Bailey Parker, Mills Barton
- If offered by Plaintiff against Defendant, could use 801(d)(2) as a party admission as to Jordan Banner's statements ONLY. Otherwise, Plaintiff and Defendant may be able to use 803 (6) Record of Regularly Conducted Activity or 803(7)Public Records, or 807.

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EXHIBIT #5: Coroner's Report on Wade Stark

- Witnesses - Dakota Stark, Mills Barton
- Plaintiff and Defendant should be able to use 803(7)Public Records and maybe 803 (6) Record of Regularly Conducted Activity

EXHIBIT # 6: Springs Park Diagram

- Witnesses - Sydney Wilson, Jordan Banner, Bailey Parker, Mills Barton, Dakota Stark, Robin Hill
- Plaintiff and Defendant should be able to introduce as demonstrative aids.

EXHIBIT # 7: Mills Barton, CV

EXHIBIT # 8: Bailey Parker, CV

- Witnesses - Bailey Parker, Mills Barton - There will be a stipulation added soon that states that they each familiar with their own and each other's CVs.
- Plaintiff and Defendant should be able to use these to aid the experts if they need to be reminded of their qualifications under Rule 612. Writing Used to Refresh a Witness's Memory.

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EXHIBIT # 9 Safety Checklist

- Witnesses - Sydney Wilson, Jordan Banner, Bailey Parker

- If offered by Plaintiff against Defendant, could use 801(d)(2) as a party admission. Otherwise, Plaintiff and Defendant may be able to use 803 (6) Record of Regularly Conducted Activity