



American Mock Trial Association 2019 Board Meeting Minutes July 19-21, 2019 Cincinnati, Ohio

I. Call to Order

Attendance:

Members present (28): Ben-Merre; Bernstein; Braunsberg; Detsky; Eslick; Gelfand; Halva-Neubauer; Harper; Haughey; Heytens; Holstad; Johnson; Langford; Leapheart; Leckrone; Michalak; Minor; Parker; Pavely; Racheter; Schuett; Sohi; Thomason; Walsh; Warihay; Watt; West; Woodward

Members not present (0):

Candidate Members present (7): D'Ippolito; Henry; Hogan; Jahangir; Olson; Rodgers; Scher

Candidate Members not present (0):

Staff & Guests (13): Bays; Bays; Beachy; Cannon; Doss; Dressel; Garmoe; Hayner-Slattery; Hubbell; Hume; Sandlin; Shimkus; Warner

Directors Emeritus (0):

II. Welcome and Remarks (Warihay)

III. Format of Agenda:

Delivered by Secretary – Pavely

All motions submitted were referred to the corresponding AMTA Committee pursuant to the policy adopted by the Board in 2007 (Rule 10.2.1). All motions are referenced numerically by the abbreviation of the AMTA Committee to which the motion was referred (e.g. EC-02 or TAB-03). The Committees had the option of tabling the motion, amending the motion or substituting the motion. Tabled motions retained their original designations, but are provided in an appendix. Motions could be advanced with recommendation or without. The final motion agenda order was subsequently set by the Executive Committee (AMTA Bylaws, Section 10.2.1) (Subject to agenda amendments made at the board meeting).

Motions appear in red and bolded. The decision of the respective committees follows each motion **IN BOLD BLUE, CAPITAL LETTERS AND UNDERLINED**. Motions that have been recommended by committee do not need to be seconded at the meeting. Motions forwarded without recommendation require a second. For a motion to be adopted, it must have received a majority of the votes cast at a meeting at which

quorum is present. (AMTA Bylaws, Section 4.10). Motions to amend the Bylaws required an affirmative vote of two-thirds of the Voting Directors (AMTA Bylaws, Section 8.02)

Appended to the Agenda as **Appendix A** is the Consent Calendar

Appended to the Agenda as **Appendix B** is a list of tabled motions. These motions were tabled by the reviewing committee and will not be considered by the Board for action. To “untable” a motion, five or more members of the Board (not including the motion’s author(s)), must request that the motion be considered. If such request is made, the full Board may vote on whether to overturn the Committee’s recommendation to table. A motion to overturn the Committee’s recommendation to table must be passed by a majority vote of the Board. ***Taking a motion off the table and placing it on the agenda alone does not result in adoption of the motion.*** A separate vote will be necessary on whether to adopt the motion.

Appended to the Agenda as **Appendix C** are the minutes from the December 2017 mid-year conference call/board meeting.

IV. Approval of Agenda

Motion by Pavely to approve the agenda. Seconded. **Motion passes.**

V. Approval of 2018 Mid-Year Board of Directors Meeting minutes

Motion by Pavely to approve the mid-year minutes. Seconded. **Motion passes.**

VI. Special Board Elections (President-Elect; At large members of Disciplinary and Human Resources Committees)

Nomination of Harper as President-Elect. **Motion to elect Harper.** **Motion passes.**

Nomination of Heytens to Disciplinary Committee. **Motion to elect Heytens.** **Motion passes.**

Nomination of Minor to Human Resources. **Motion to elect Minor.** **Motion passes.**

VII. Consideration of Tabled Motions

For procedure to “untable” a motion, please see discussion of Appendix B above. If a motion is “untabled”, it will be taken up in the order it would have appeared in the Agenda. (i.e. EC-05 would be discussed after EC-04).

Signatures received to untable the following motions:

TFC-08. Motion to untable fails.

EC-05. Vote to untable occurred by ballot. **Motion to untable passes, 19-9.**

Accommodations-01. Motion to untable passes.

Rules-07. Motion to untable passes.

VIII. Approval of Consent Calendar (attached as Appendix A)

Motion by Racheter to suspend the rules to discuss Rules-05 at this time. Motion passes.

Motion by Ben-Merre to amend 2(c) to say 3.15(a) or (b). Seconded. Motion to amend fails.

Rules-05 passes.

Motion by Thomason to approve the consent calendar. Seconded. Motion passes.

IX. Committee Reports

- A. Academics Committee (Leapheart): Written report**
- B. Accommodations Committee (Michalak): Oral report**
- C. Analysis Committee (Hogan): Written report**
- D. Audit Committee (Pavely): Oral report**
- E. Budget Committee (Eslick): Oral report**
- F. Civil Case Committee (Gelfand): Written report**
- G. Criminal Case Committee (Schuett): Written report**
- H. Competition Response Committee (Harper): Written report**
- I. Development Committee (Bernstein): Written report**
- J. Disciplinary Committee (Bernstein): Written report**
- K. Ethics Committee (Langford): Oral report**
- L. Human Resources Committee (Pavely): Oral report**
- M. NCT Case Committee (Thomason): Oral report**
- N. New School and Mentorship Committee (Olson & Rodgers):
Written report**
- O. Rules Committee (Walsh): Written report**
- P. Strategic Planning Committee (Harper): Written report**
- Q. Tabulation Advisory Committee (Woodward): Oral report**
- R. Tournament Administration Committee (Watt): Written report**
- S. Tournament Future Planning Committee (Bernstein): Written
report**
- T. Website, Marketing and Social Media Committee (Scher):
Written report**

X. Motions:

Motion by Woodward to suspend the rules to allow the Chair to take any motion in any order at his discretion. Seconded. **Motion passes.**

On Sunday morning, the Board voted to enter Executive Session. Votes taken during Executive Session that were authorized by the Board to be reflected in the public minutes appear below. Open session resumed at 10:30 a.m.

ACCOMMODATIONS-01: Motion by Watt to change Rule 7.11, in part, as follows:

(1) REQUESTS FOR ACCOMMODATIONS. Requests for accommodation should be made either on the Team Registration Form or separately by writing to the Accommodations Committee. Requests should be made by the **January 15** preceding the AMTA-sanctioned tournaments for which the accommodation is sought. Late requests will only be considered **on a case-by-case basis and when practicable by both AMTA and AMTA's tournament host(s).** ~~if one of three criteria are met: (1) the student needing the accommodation joined the team after December 26; (2) a change in the student's physical condition, health, or treatment status occurred after December 1, and that change necessitates the accommodation; or (3) failure to grant an accommodation poses a risk to the student's health. Late requests necessitated by the addition of a student or a change in health status must be made within seven days of the student joining the team or learning about the change in his or her physical condition, health, or treatment status.~~ Requests for accommodation not made by **January 15** should be directed to the Accommodations Committee at the earliest possible date. If the Accommodations Committee is unable to reach a decision before the start of the tournament at issue, or if the request was never brought to the Accommodations Committee, the student, coach, or person making the request shall bring the request to the tournament's AMTA representatives, who shall have the authority to grant or deny the request. Any AMTA representatives presented with such a request shall be permitted to grant it ~~only if they unanimously conclude that it meets one of the three exceptions identified herein for late requests.~~ If denied, requests for accommodation handled by a tournament's AMTA representatives ~~shall not be eligible for the appeal process described in Rule 7.11(5)~~ **may be appealed to the Tabulation Director, who shall decide in consultation with the President, whether to overturn the AMTA representatives decision.**

(2) The student who requires accommodation or any coach or official contact person of the student's school may make the request for accommodation. Requests should identify the basis for the accommodation, the specific accommodation sought, verification of the physical or medical impairment necessitating the accommodation, and any other information the requesting individual deems appropriate for consideration of the request for accommodation. Such verification need not include medical documentation. ~~Requests made after January 1 should include information demonstrating that the request falls within one of the three exceptions for late requests listed in Rule 7.11(1).~~

Rationale: As currently written, this rule has both inconsistent and confusion time deadlines. This motion is intended to simplify the deadlines, and provide an appeal process for in-tournament decisions to ensure that the organization is not unnecessarily exposed to legal liability based on the denial of an accommodation. Furthermore, the simplification of the analysis of the late requests allows the Accommodations Committee to consider requests on a case-by-case basis to analyze whether the accommodation is practical, and the impact of the request on the host, such that the specific basis for the late requests are unnecessarily complicated and not necessary.

TABLED BY COMMITTEE; UNTABLED BY VOTE

Motion by Braunsberg to refer to the Accommodations Committee for further review to provide internal operating procedures. Seconded. **Motion to amend the amendment to require a report within one month. Accepted by unanimous consent.**

Motion to refer passes.

BUDGET-01: Motion by Eslick to establish a foundation within AMTA, to be funded by existing liquid assets, and for the appointment of an *ad hoc* committee to include the Treasurer, the President, and others at the President's discretion, to determine a mission and purpose for the foundation.

ADVANCED WITH A POSITIVE RECOMMENDATION

During Executive Session, **the Board voted to pass Budget-01.**

During Executive Session, **the Board voted to adopt the proposed Budget.**

CRC-02: Motion by Harper [amended by committee] to revise Rule 8.6(6)(c) as follows in the bold italicized print:

Review Procedure. Any allegations of an egregious Improper Invention must be brought to the attention of the Competition Response Committee ***by submitting the Competition Response Committee Form on the AMTA website*** by 12:00 noon Central time on the Tuesday immediately following the tournament, unless the matter occurred on the final weekend of regionals or the final weekend of ORCS, in which case the deadline is 4:00 p.m. Central time on the Monday immediately following the tournament. If the allegation is raised timely, the Competition Response Committee shall investigate the allegation ***upon its collection of a complete investigative file. A complete investigative file shall include (i) the Complaint filed through the online Competition Response Committee Form; (ii) the Response filed through the online Competition Response Committee Form (and submitted no more than 72 hours after request); and (iii) any supplemental materials requested of the parties by the Committee***

Chair. *The Chair shall have discretion to receive additional supplemental materials, including, but not limited to, trial recordings, ballots and comment sheets, statements from others including the AMTA Representatives, and amicus briefs. The parties shall work in good faith to provide any requested supplemental materials. Any amicus briefs must be received by the relevant party's filing deadline and must total no more than 500 words. The Chair shall also have discretion to set word or page limits for any additional supplemental materials. If, after investigation, the Committee concludes that an egregious improper invention of fact did occur, the Committee must report* its findings and recommendation to the Executive Committee. The Executive Committee shall review the report of the Competition Response Committee and, upon the Executive Committee's determination of egregious wrongdoing, may issue sanctions against the violating program, team, and/or its individual members. Sanctions may include any sanctions permitted under this AMTA Rulebook.

ADVANCED WITH A POSITIVE RECOMMENDATION

Motion passes.

CRC-03: Motion by the Competition Response Committee to direct the CRC to examine whether any changes to the existing rules governing invention of fact (including its enforcement mechanism) are warranted and to propose any changes in time to be considered at the December 2019 mid-year meeting.

Secretary's Note: This is the CRC's amendment to what was originally CRC-01. CRC-01 has been placed in Tabled Motions in order to preserve it.

ADVANCED WITH NO RECOMMENDATION

Motion passes.

EC-05: Motion by Schuett to rename the "Neal Smith Award" to the "Dr. Frank Guliuzza Award."

Rationale: While I appreciate, as an Iowan, naming our award after a former Iowa Senator, I believe Dr. Guliuzza exemplified exactly what this award is meant to honor: individuals that "have made outstanding and exemplary contributions to law related education and its mission to promote public understanding of law and the legal process." As a former winner of the award, and a man that devoted so much of his time and effort into this organization, it seems appropriate to rename the award after Dr. Guliuzza.

TABLED BY COMMITTEE; UNTABLED BY VOTE

During Executive Session, **the Board voted to refer EC-05 to the Development Committee for further study.**

EC-08: Motion by Harper that a subcommittee of the Competition Response Committee be on call to handle allegations of egregious invention of material fact during the National Championship Tournament.

Rationale: We have discussed this before, and it is becoming clear that AMTA needs an avenue to address improper factual inventions during NCT. The CRC and perhaps the EC should work out the specifics of the committee and its authority, but we should think seriously about having a body on call to handle these issues in real time during NCT.

ADVANCED WITH NO RECOMMENDATION

Motion by Parker to refer to the CRC for a detailed proposal for implementation. Seconded.

Motion by Bernstein to amend to pass the motion for one year. Seconded.
Motion to amend passes.

Motion to refer fails.

Motion by Bernstein to amend to pass the motion for one year. Seconded.
Motion to amend passes.

Motion fails.

EC-09: Motion by Harper to Amend Rule 9.5(6) as follows:

(6) Publishing of final sanction. Upon either the expiration of the time to appeal a sanction to the Executive Committee or the decision of the full Board imposing a sanction, the Secretary shall create a public version of the sanction which, **whenever possible**, does not identify the sanctioned school or individual by name, and cause such public version to be posted on the AMTA website and other public channels.

Rationale: We never intend to identify schools or students who are subject to AMTA sanctions. However, there may be circumstances when it would be impossible to publicly announce a sanction without also (either implicitly or explicitly) identifying individuals or schools. That is obviously never our goal, and we will always go out of our way to avoid publicly naming anyone who receives a sanction, but this motion brings the rule in line with what I believe is our current, practicable, practice.

ADVANCED WITH A POSITIVE RECOMMENDATION

Motion passes.

ETHICS-01: Motion by the Ethics Committee (Langford) to add Rule 10.3.6
Ethics & Professionalism Committee duties and procedures.

(1) Composition. The Ethics & Professionalism Committee (“EPC”) shall consist of no more than ten (10) members. Two student competitors shall serve as members of the committee, at least one of whom must be from a student-run program. "Student-run" means a program where one or more elected students make all personnel decisions, with or without the input or advice of a coach or faculty advisor. The students may serve on the committee through the annual board meeting following the completion of the student’s competitive eligibility.

(2) Mission Statement. The EPC’s mission is to improve the condition of ethical conduct and professionalism in all aspects of college mock trial by developing and implementing strategies that are consistent with the educational mission and goals of AMTA and to emphasize the ideals of mock trial as described in Rule 1.5, particularly by fostering greater acceptance of the values of respect, fairness, civility, honesty, and responsibility. The EPC shall work to educate, on a continuing basis, all AMTA members about such policies in the AMTA Rules, including the development of best practices and creative tools for promoting ethical conduct and professionalism.

The committee has developed the following definitions for ethical conduct and professionalism:

- Ethical conduct is a set of guiding principles with which each person follows the letter and spirit of the rules. Such conduct reflects a higher standard than law because it includes, among other principles, fundamental values that define professionalism.
- Professionalism is a set of behaviors to be exhibited by student-competitors, coaches, school officials, judges, fans, and AMTA-affiliated officials in mock trial competition. These behaviors are based on values, especially respect and integrity.

ADVANCED WITH A POSITIVE RECOMMENDATION

Motion by Pavely to divide the question to vote separately on sections 1 and 2. Seconded. **Motion passes.**

Motion by Bernstein to amend to say “student competitors may” instead of “two student competitors shall.” **Motion to amend accepted with unanimous consent.**

Motion subsection 1 fails.

Motion subsection 2 passes.

RULES-04: Motion by Bernstein (on behalf of Anna Eldridge)

1. Limitation on “hostile witness” portrayals:

Students may play witnesses who are reluctant to testify and/or reasonably hesitant to offer testimony adverse to a particular side or party. Student attorneys may not, in any case, move the court to declare a witness as hostile or adverse for the purpose of leading the witness.

Rationale: Each attorney in mock trial is required to conduct a direct and examination because the activity contemplates the necessity of showing two separate and unique skills that present different challenges. Cases are often written with an eye toward balance by similarly contemplating the ability to have strong or weak cross options. By scripting out a cross examination through an adverse or hostile witness, students are not demonstrating either the ability to conduct a direct (developing testimony organically through the witness) or cross examination (demonstrating inconsistencies or developing testimony through thoughtful questioning of a witness with whom the attorney cannot guarantee cooperation). Leading a hostile or adverse witness also creates additional challenges in terms of invention (it becomes difficult to impeach based on innuendo and attorney questions) and can put the attorney conducting the cross examination into a position of dealing with a witness who drains time and is non-responsive. While hostile witnesses do exist in real courtrooms, the answers for them are not scripted by the attorney and the opposing attorney is not required to cross them. Given the boundaries of this activity, there does not seem to be a need for practicing this skill.

ADVANCED WITH A POSITIVE RECOMMENDATION

Motion by Woodward to amend to include a repeal of MRE 611(c)(2). **Motion to amend passes.**

Motion fails.

RULES-07: Motion by Walsh (on behalf of Alan Medvin) to amend Rule 4.31(1) (changes in red):

Rule 4.31 Time limits. Time limits for all trials in sanctioned tournaments shall be strictly observed.

(1) Time limits generally. Except as adjusted downward in a special instruction, time limits for each side shall be as follows:

Opening statements - 6 minutes per side

Direct examinations of all three witnesses (combined) - 25 minutes per side

Cross examination of all three witnesses (combined) - 25 minutes per side

Closing arguments - 8 minutes per side

Rationale:

- a) This proposal does not impact the total length of the trial; instead, it merely adds one (1) minute to openings and subtracts one (1) minute from closings;*
- b) It is difficult to accomplish all the goals of a good opening in five minutes. More specifically, openings are used to introduce the case theme, create a coherent narrative of the case facts, introduce (in some way) the witnesses to be called, and to lay out the basic legal framework of the case. Doing all of that in five minutes oftentimes makes the student appear rushed;*
- c) Allocating nine minutes for closings and five minutes for openings appears to devalue the importance of openings. Eight minutes for a closing is ample time for each side to close effectively; and*

Judges will likely appreciate a slightly longer opening, particularly if they are hearing a case for the first time as a more thorough opening will likely give them a clearer understanding of the case and associated issues.

TABLED BY COMMITTEE; UNTABLED BY VOTE

Motion by Woodward to substitute the motion as follows:

That Rule 4.31(1) and (2) be amended as follows:

(1) TIME LIMITS GENERALLY. Except as adjusted downward in a special instruction, time limits for each side shall be as follows:

Opening statement and closing argument (combined) -
15 minutes per side

Direct examinations of all three witnesses (combined) - 25 minutes per side

Cross examination of all three witnesses (combined) - 25 minutes per side

(2) REBUTTAL. The plaintiff/prosecution may give a rebuttal after the defense closing argument. The length of time for plaintiff/prosecution's rebuttal (i) shall be the amount of time not used during the plaintiff/prosecution's opening statement and closing argument, but (ii) may not, in any event, exceed five minutes. The plaintiff need not expressly reserve time (e.g., state that "all remaining time is reserved for rebuttal") and does not waive its right to rebuttal by failing to expressly reserve time. The defense shall not give a rebuttal.

**Motion by Bernstein to amend the substitute motion to 14 minutes. Seconded.
Motion to amend passes.**

Motion to substitute passes.

Motion passes.

RULES-10: Motion by Harper to revise the judge presentation to include specific language from the relevant rules regarding improper invention.

Our rules are fairly clear about what constitutes an improper invention of fact, and about how judges are to treat those inventions. I motion that our judge presentation reflect the language of our rules so that we can better provide judges with guidance about how to handle factual inventions.

ADVANCED WITH NO RECOMMENDATION

Seconded. **Motion passes.**

TAC-03: Motion by Bluebond (on behalf of D'Ippolito) to amend the language of Rule 5.22 as follows:

Each opening round championship tournament shall award at least ten ~~outstanding~~ **All-National** attorney and ten ~~outstanding~~ **All-National** witness awards.

Rationale: The AMTA Rulebook provides that (1) an individual earning an award at Regionals is an "All-Region" competitor (see Rule 5.14); and (2) an individual earning an award at the National Championship Tournament is an "All-American" competitor (see Rule 5.31). The Rulebook provides no designation for competitors earning individual awards at ORCS.

Earning an individual award at ORCS is a terrific accomplishment, and for many competitors, it is the top individual achievement of their AMTA careers. However, those who are unfamiliar with AMTA are understandably less likely to recognize the significance of this accomplishment when AMTA identifies these award winners as "Outstanding" competitors, as opposed to "All-National" competitors or some variation thereof (I chose "All-National" because, per my conversations with a handful of coaches, a number of programs already use this designation). The implications of this distinction are significant: when reviewing an AMTA competitor's resume, a hiring or admissions committee may reasonably consider an "All-National" competitor award to be more impressive than an "Outstanding" competitor award.

Notwithstanding the desire to ensure that AMTA's competitors are recognized for their achievements, it seems arbitrary to provide designations for individual award winners at AMTA's first and third levels of competition, but not at its second level.

ADVANCED WITH NO RECOMMENDATION

Seconded. **Motion by Leapheart to postpone to a definite time** of the mid-year meeting. Seconded. **Motion to postpone passes.**

TFC-01: Motion by Detsky that the Tournament Administration Committee may designate AMTA as a tournament host if a suitable host does not volunteer in an area of need, and to take any action consistent with AMTA serving as host.

Rationale: In areas of need where we have no volunteers, we need to find our own facility, send a couple of AMTA reps early to set up and apportion a part-time minimum wage salary for some volunteers for a weekend.

ADVANCED WITH A POSITIVE RECOMMENDATION

Motion passes.

TFC-02: Motion by Bernstein and Heytens that AMTA shall neither require nor ask NCT hosts to provide a catered banquet with the Sunday awards ceremony.

Rationale: The banquet is extremely burdensome for hosts. It's by far the most expensive aspect of hosting NCT (anecdotal evidence suggests it's often between 40-50% of the entire budget) and it's logistically challenging, too (few facilities are large enough to accommodate sufficient banquet tables, and space is often particularly scarce in cities large enough to host NCT in the first place). And there's no corresponding benefit: food produced in those quantities is rarely better than mediocre; students don't care about plated lunches; and teams mostly stick to themselves at the banquet anyway. This proposal would allow teams to get lunch on their own (including with family) and then attend an award ceremony in a presumably less expensive space. This would save a lot of money and make life easier on NCT hosts without any material loss to the student experience.

ADVANCED WITH A POSITIVE RECOMMENDATION

Motion passes.

TFC-03: Motion by Bernstein that, at ORCS, AMTA will use the following pairing system designed to equalize strength of schedule:

Teams will be divided by TPR into four groups: Groups A (teams ranked 1-6), B (7-12), C (13-18), and D (19-24). Each team will face exactly one team from each of the four groups. The Tabulation Advisory Committee is directed to create a detailed implementation of this policy for the Board's consideration at the 2019 mid-year meeting.

Rationale: AMTA's entire system of determining winners -- based first on number of ballots won -- is predicated on a false assumption: that teams face opponents of equivalent difficulty. In fact, AMTA's pairing system makes no effort to equalize schedule strength and, in some ways, is designed to reduce the likelihood that teams face schedules of equivalent difficulty (by pairing high-high for two rounds, and

inconsistently overall). The proposed pairing system would create a more balanced playing field. TPR is not perfect, but this would make it far less likely that a team faces, say, three of the very best teams in the tournament, and it would make it far less likely that a team faces, say, none of the very best teams in the tournament. It does not advantage top-ranked teams, as they would also have to face exactly one team in Group A. I used this format at three tournaments, and it substantially reduced the standard deviation of teams' CS – in other words, it created more similar strengths of schedule. Note that this could not be used at Regionals, as it requires a field size of a multiple of eight, and (currently and historically) Regionals have uneven field sizes.

ADVANCED WITH A POSITIVE RECOMMENDATION

Motion passes.

TFC-04: Motion by Haughey that AMTA pay ORCS and Nationals hosts based directly upon the number of qualified judges they recruit for their tournaments, providing significant financial incentive for accomplishing the goal of three judges in each round.

ADVANCED WITH NO RECOMMENDATION

Motion by Watt to amend the motion to direct the TFC to prepare an implementation plan for the Board's review. Seconded.

Motion by Racheter to amend the amendment to require the implementation plan to be presented at the mid-year meeting. **Accepted.**

Motion to amend passes.

Motion fails.

TFC-05: Motion by Bernstein that, for the National Championship Tournament, no school may earn more than one bid to the National Championship Tournament and rosters may include up to 12 students.

Rationale: It is becoming increasingly difficult to earn a bid to NCT, as the number of teams is increasing and the number of NCT bids is not. This proposal is based on two principles: at the margins, it is better to include more schools at NCT; and NCT size should not be increased because it would create too great a strain on hosts.

ADVANCED WITH A POSITIVE RECOMMENDATION

Motion by Racheter to refer to TFC for further analysis. Seconded. **Motion to refer passes.**

TFC-06: Motion by Bernstein and Heytens to require programs seeking to register more than two teams at regionals to make a bona fide offer to host an AMTA tournament at least once every two years.

Rationale: Participation is growing, and AMTA's tournament structure is approaching capacity. As AMTA struggles to find more hosts, schools are hosting more and more invitationals each season. Every school should be able to participate in AMTA competitions, but the privilege of registering more than two teams should be reserved for those schools willing to contribute to the community.

ADVANCED WITH A POSITIVE RECOMMENDATION

Motion by Racheter to refer to TFC for further analysis. Seconded. **Motion to refer passes.**

TFC-07: Motion by Bernstein and Heytens that there will be eight ORCS, each with 24 teams and six bids to the National Championship Tournament.

Rationale: This year, with five bids per ORCS, saw more 6-2 teams not qualify for NCT than in the previous ten years of ORCS combined. This is problematic because it makes one trial vastly more likely to end a team's season. Our prior structure is superior.

ADVANCED WITH NO RECOMMENDATION

Motion fails.

XI. Unfinished/New Business

Motion by Warihay to replace Harper as CRC Chair with Thomason. **Motion passes.**

Motion by Watt to adopt Stanford as the 2021 NCT host. Seconded.

Motion by Holstad to amend to direct TAC to provisionally award the 2022 NCT to Richmond if they reapply. **Motion fails for lack of a second.**

Motion passes.

Motion by Detsky to host the 2020 Board Meeting in Colorado. **Motion passes.**

Motion by Racheter to commend Leckrone for an excellent meeting. **Commendation by applause.**

XII. Adjournment

Motion to adjourn. Motion passes.

Appendix A: Consent Calendar

Motion by Warihay to adopt 2019-20 AMTA Committee Assignments

AMTA Officers

William Warihay, President
Brandon Harper, President-Elect
Melissa Pavely, Secretary
Matthew Eslick, Treasurer

Executive Committee (also serves as Nominating Committee)

William Warihay (President)
Brandon Harper (President-Elect)
Matthew Eslick (Treasurer)
Melissa Pavely (Secretary)
Melissa Watt (Tournament Administration Chair)
Johnathan Woodward (Tabulation Director)
DeLois Leapheart (Academics Committee Chair)
Kyle Thomason (Competition Response Committee Chair)
Justin Bernstein (Development Committee Chair)
Michael Walsh (Rules Committee Chair)

Academics Committee

To provide resources for AMTA members who wish to create mock trial courses and curricula, to conduct research on mock trial, and to serve as a liaison to academic institutions.

DeLois Leapheart (Chair)
David Ben-Merre
Brandon Harper
Adria Kimbrough
Dione Merkel
Angela Minor
Mark Miller
Brian Olson (Mentoring Co-Chair)
Kelly Rodgers (Mentoring Co-Chair)

Accommodations Committee

Diane Michalak (Chair)
David Cross (Counsel)
Laura Braunsberg
Josh Leckrone
Zac Mundy
Don Racheter

Analysis Committee

Andy Hogan (Chair)
Ben Garmoe
Ben Graham
Sam Jahangir
Sarah Sawtelle
Kyle West

Audit Committee

Melissa Pavely (Chair)
Steven Haspel
Tom Parker

Budget Committee

Matthew Eslick (Treasurer/Chair)
William Warihay (President)
Melissa Pavely (Secretary)
Thom Scher
Laura Braunsberg

Case and Evidentiary

Review case proposals and select the case for use in competition, offer clarifications as necessary, respond to queries regarding the case and make revisions as necessary

Civil Case Committee

Michael Gelfand (Chair)
Michael D'Ippolito
Ali Foreman
Dan Haughey
Andy Hogan
Sam Jahangir
Mackenzi Siebert
Abbe Stensland
Kyle West

Criminal Case Committee

Neal Schuett (Chair)
Elliott Averett
David Ben-Merre
Samantha Feak
Brandon Harper
Toby Heytens
Megan Keenan
Elizabeth Smiley
Kyle Thomason

NCT Criminal Case Committee

Kyle Thomason (Chair)
Ravi Narayan
Chris Suedekum
Jeremy Zarzycki

NCT Topic Approval Committee

David Nelmark (Chair)
David Cross
Matthew Eslick
Johnathan Woodward
Sara Zeigler

Competition Response Committee

To make timely, in-season rule interpretations, subject to Board review at the annual meeting. Note that individuals serve on the Committee by virtue of office and membership changes as the person holding the offices changes.

Kyle Thomason (Chair)
Johnathan Woodward (Tabulation Director)
Michael Walsh (Rules Committee Chair)
Neal Schuett (Criminal Case Committee Chair)
Toby Heytens (Ombudsperson)
Melissa Watt (Tournament Administration Committee Chair)
William Warihay (President)

Development Committee

Justin Bernstein (Chair)
Graham Henry
DeLois Leapheart
Sue Johnson
Andy McNeil
Kelly Rodgers
Thom Scher
Melissa Watt
Jacinth Sohi

Disciplinary Committee

To enforce the AMTA Code of Conduct with regard to the Board of Directors, Candidates, and Representatives.

Brandon Harper (President-Elect)
Tom Parker (Appointment by President)
Toby Heytens (Member At-Large)

Ethics & Professionalism Committee

Barry Langford (Co-Chair)

Devon Holstad (Co-Chair)

Laura Braunsberg

Kristen DelForge

Alexander Hartz

Sam Jahangir

Human Resources Committee

Melissa Pavely (Secretary)

Glen Halva-Neubauer (President's selection)

Angela Minor (Member-at-large)

Michael Polovich

Intellectual Property Management Committee

Toby Heytens (Chair)

Michael Gelfand

Angela Minor

Brian Olson

Kyle Thomason

Kyle West

New School Recruitment and Mentorship Committee

Brian Olson (Co-Chair)

Kelly Rodgers (Co-Chair)

Adam Detsky

Samatha Feek

Ben Garmoe

Michael Gelfand

Brandon Harper

Paul Hubbell

Adria Kimbrough

Angela Minor

Zac Mundy

Don Racheter

Rules Committee

Michael Walsh (Chair)

Justin Bernstein

Toby Heytens

Sue Johnson

Tom Parker

Melissa Pavely

Neal Schuett

Strategic Planning

Brandon Harper (Chair)
Matthew Eslick
Glen Halva-Neubauer
Dan Haughey
Barry Langford
DeLois Leapheart
Tom Parker
Michael Walsh
Melissa Watt
William Warihay

Tabulation Advisory Committee

Johnathan Woodward (Chair)
Justin Bernstein
Graham Henry
Devon Holstad
Diane Michalak
Neal Schuett

Tournament Administration Committee

Melissa Watt (Chair)

Team and Feeder Subcommittee

Adam Detsky (Chair)
Ryne Cannon
Michael D'Ippolito
Ryan Nolte
Thom Scher
Brandi Snow
Johnathan Woodward

Site Selection and Host Communication Subcommittee

Josh Leckrone (Chair)
Sue Johnson
Michael Polovich
Kelly Rodgers
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AMTA Representative Assignment Subcommittee

Brandon Harper (Chair)
Matthew Eslick (Treasurer)
Laura Braunsberg
Michael D'Ippolito
Glen Halva-Neubauer
Josh Leckrone
Diane Michalak

Judge Recruitment Subcommittee

Andy Hogan (Chair)
Sue Johnson
Margarita Koblasz
Steven Haspel
Graham Henry
Devon Holstad
Paul Hubbell
Sam Jahangir
Diane Michalak
Ryan Seelau
Kyle West

Website, Marketing and Social Media Committee

Thom Scher (Chair)
David Ben-Merre (Newsletter Co-Editor)
Michael D'Ippolito
Andy Hogan
Ryan Seelau
Jacinth Sohi (Newsletter Co-Editor)
Melissa Watt (Website Manager)
Johnathan Woodward

Tournament Future Planning Ad Hoc Committee

Justin Bernstein (Chair)
Adam Detsky
Toby Heytens
Devin Holstad
Dan Haughey
Abbe Stensland
Melissa Watt
Neal Schuett
Johnathan Woodward

Counsel: David Cross, Morrison & Foerster, LLP
Insurance Coordinator: Adam Detsky
Newsletter Editor: David Ben-Merre & Jacinth Sohi
Ombudsperson: Toby Heytens
Parliamentarian: Johnathan Woodward
Trophy Coordinator: Adam Detsky
Website Manager: Melissa Watt

EC-01: Motion by Bernstein to revise the first sentence of Rule 10.4 to read: "AMTA will recognize outstanding coaches by inducting them into a Coaches' Hall of Fame, with inductees to be unanimously selected by the 12 most recently inducted members of the Coaches' Hall of Fame."

Rationale: This motion proposes two changes. The first is to require unanimity, which merely codifies the committee's long-existing practice. The second is to limit voting to the 12 most recently inducted members. This is to ensure that induction will be determined by those who most likely to be familiar with any current generation of coaches and to prevent the committee from reaching an unwieldy size. (I chose "12" so all current members can vote in the next decision.)

ADVANCED WITH A POSITIVE RECOMMENDATION

EC-02: Motion by Holstad [amended by committee] to Amend Rule 9.5(1) as follows:

Rule 9.5 Sanctions.

(1) GENERAL RULE AND PROCEDURE. The AMTA Representatives may request sanctions due to any violation of any rule occurring at a sanctioned tournament. Such request shall be made to the Executive Committee. The Executive Committee may initiate the sanction procedure due to any violation of any rule **at any time** ~~occurring outside the bounds of a sanctioned tournament.~~

Rationale: Changes to 9.5(1) are needed because the EC clause does not make sense – technically every violation of our Rules would need to occur within the bounds of a sanctioned tournament, because, as stated in Rule 1.1, “These rules shall apply to all sanctioned tournaments,” and AMTA expressly disclaims responsibility for anything other than our own sanctioned tournaments. Thus, as written, 9.5(1) only allows the sanction process to begin at the request of AMTA Representatives. This change clarifies that the EC may begin the sanction procedure process on its own, regardless an AMTA Representatives’ request.

ADVANCED WITH A POSITIVE RECOMMENDATION

EC-07: Motion by Watt to change Rule 3.6.1, in part, as follows:

Permission from the Executive Committee must be requested in writing ~~and must be received by the Executive Committee no later than October 15th.~~

Rationale: Changed language is stricken through. This motion is intended to remove the date requirement for Rule 3.6.1, which is the rule that allows schools to use students from more than one school. This date requirement should be removed because, as the text of the rule indicates, this rule is intended to help new schools and students at schools who do not have teams participate at other schools to learn how to start a team. It is unlikely that students in such situations will be able to know that they will not be able to get a team together for February in October. Furthermore, the rule

requires EC approval, so to the extent that timing is important, the EC will be able to consider timing of the request in their review and approval of each individual request.

ADVANCED WITH A POSITIVE RECOMMENDATION

RULES-01: Motion by Eslick to change these two rules, in this order:

IP Policy, section 1.2(f):

Replace existing language with:

f. “**Invitational tournament**” shall have the same meaning as provided in the AMTA Rulebook.

Rulebook, section 1.2(e):

Replace existing language with:

e. “Invitational tournament” means any event at which more than two schools and six teams compete or scrimmage using the AMTA Case within any three-day period of time and which is not an AMTA-sanctioned tournament.

Rationale: Cleans up what an “invitational” is.

ADVANCED WITH A POSITIVE RECOMMENDATION

RULES-02: Motion by Holstad to Amend Rule 3.8

Rule 3.8 Use of ineligible team members. Any team that knowingly uses an ineligible person as a member will be subject to sanctions. Challenges alleging ineligibility of a competitor **during a tournament** must be made to an AMTA Representative **before or after a round immediately after the conclusion of the round in which the alleged violation occurred.** Challenges under this rule may not be made **but not** to a judge and **may not be made** during a trial. **Challenges alleging ineligibility of a competitor made at a time other than during a tournament must be raised to the AMTA Executive Committee.**

Rationale: These changes are intended to clarify that eligibility challenges may be made at any time. As the current rule reads, no challenge to eligibility may be made outside the duration of a tournament.

ADVANCED WITH A POSITIVE RECOMMENDATION

RULES-03: Motion by Holstad to repeal and replace Rule 9.9

Rule 9.9 No Appeal

The AMTA Representatives’ decision regarding intervention requests is final and no team may appeal such decision. ~~A team that seeks an intervention from the AMTA Representatives during trial waives its right to an appeal of the AMTA Representatives’ decision.~~

Rationale: The current wording of this rule implies that the team which doesn't seek the intervention may appeal the Reps' decision. This change makes clear that no one may appeal the decision to intervene or not.

ADVANCED WITH A POSITIVE RECOMMENDATION

RULES-05: Motion by West to amend Rule 3.15

Rule 3.15 Substitutions in case of illness.

(1) GENERAL RULE. If, **after the start of a tournament or round**, a participant becomes ~~too ill to compete~~ **unable to compete because of illness, injury, or personal emergency**, the affected team may use a permissible substitute. If no permissible substitute is available, or the team chooses to not use a permissible substitute, the judges shall enter a zero for the role(s) and the trial will proceed.

(2) PERMISSIBLE SUBSTITUTES DEFINED. Permissible substitutes are:

- (a) other persons on the roster of the affected team who are not competing in that trial;
- (b) a person on the roster of the opponent's team who is not already competing in that trial, **but only if there is no person meeting the requirements of 3.15(2)(a)**;
- (c) any other person on the roster of any team competing in the tournament but not in that particular round, **but only if there is no person meeting the requirements of 3.15(2)(a)**.

Rationale:

As written, Rule 3.15 does not place a priority order on the three types of permissible substitutes that it defines—other students on the roster, students on the opponent's team, and students from other teams. As a result, the rule seems to allow a team with 10 students to pull a talented substitute from another team if one of its students fell ill, which does not seem like an outcome AMTA should encourage. The proposed rule change seeks to address this issue by requiring teams to use extra rostered students where available.

The proposed rule also allows schools to use substitute students in case of personal emergency. If we allow substitutes to replace ill students, I don't know why we would not also allow substitutes to replace students who have to leave the tournament because a death in the family or a similar issue. "Personal emergency" is left undefined so as to leave application of the rule to the discretion of our AMTA representatives.

The proposed rule also clarifies that it only applies when the unavailable student becomes unavailable after the start of the tournament. This is to prevent teams from gaming our minimum roster size requirement by showing up with five students and claiming one is ill.

ADVANCED WITH A POSITIVE RECOMMENDATION

RULES-06: Motion by West to amend Rule 4.28 (2):

(2) BY A SCHOOL COMPETING IN A TRIAL. A school may videotape or record any trial in which the school is competing, so long as the recording does not interfere with the conduct of the trial. The use of any such recording is limited to the educational use of the school making the recording. Commercial use is prohibited without the permission of AMTA and all involved participants. **By competing in a sanctioned tournament, each participant grants the schools he or she participates against the right to record the participant's likeness and performance.**

Rationale:

AMTA has rules governing videotaping by AMTA, videotaping by the media, and videotaping by opposing teams. The first two rules have provisions establishing that each participant, by competing, grants those entities (AMTA and the media) the right to record the participant's likeness. Although implied, the rule governing videotaping by opposing teams does not have such a provision. This change addresses that apparent oversight.

ADVANCED WITH A POSITIVE RECOMMENDATION

RULES-09: Motion by Watt to change Rule 2.2(4), in part, as follows:

(4) CHANGE OF PRIMARY CONTACT. Any request to change the primary contact must be submitted by **the primary contact, the** author of the Authorization Letter, as defined by Rule 2.3(3), or the original letter writer's replacement or that individual's supervisor.

Rationale: This motion seeks to implement a practice that has been occurring, which allows an outgoing primary contact to pass-off those responsibilities to a new person without necessarily involving the Authorization letter signator, as that person may be more difficult to reach and not involved in the day-to-day activities of the team.

ADVANCED WITH A POSITIVE RECOMMENDATION

TAB-02: Motion by Watt to remove all references and/or allowances in the Tabulation Manuel that allows opposing teams to review blue ballots in another team's folder in the tab room during the tournament, and replace with instructions prohibiting teams from looking in another team's ballot folder for any reason.

Rationale: If a team needs to review another team's results, they can review the tabulation cards. A team should not, under any circumstances, be permitted to go through another teams ballots. The Tab Manuel currently allows teams to go through another team's blue ballots only, and this would, in theory, allow teams to also glance at comment sheets to see witness calls in the process.

ADVANCED WITH A POSITIVE RECOMMENDATION

TAC-01: Motion by Eslick [amended by committee] to Amend Rule 9.3(3) as follows:

(3) DISAGREEMENT BETWEEN THE REPRESENTATIVES. If the AMTA Representatives cannot agree on whether a penalty is appropriate, or what the appropriate penalty should be, the AMTA Representatives shall immediately consult the Tabulation Director, and the determination will be made by a simple majority of the three officials. If the Tabulation Director is unavailable for immediate consultation, or is one of the AMTA Representatives involved, the AMTA Representatives shall consult a member of the Executive Committee according to the following order: **Tournament Administration Committee Chair, Competition Response Committee Chair, Rules Chair, President, and Past-President/President-Elect**. Once a determination is made, the AMTA Representatives shall immediately notify the affected parties of the determination.

Rationale [original]: People close to the rules should decide rules-based things, not the Treasurer.

ADVANCED WITH A POSITIVE RECOMMENDATION

TAC-04: Motion by Watt [amended by committee] to change Rule 2.10(2)(f), in part, as follows:

If AMTA is unable to offer a team on the waitlist a spot in a Regional Tournament within 400 miles from that school's campus as measured by distance from campus to the tournament site via Google Maps or a similar program designated by the Team and Feeder Subcommittee **by 14 days before the start of the latest scheduled tournament**, and that school does not choose to compete at a more distant regional, then the School will be entitled to a refund of the Regional Tournament fee and late registration fees paid for the team in question.

Rationale: Added language is in bold. This motion is intended to add a time restriction in addition to the distance restriction to prevent a team from losing their money because they did not affirmatively withdraw before a sport becomes available and then a spot becomes available a very short time before the tournament when it is not logistically possible for them to attend. Two weeks is a reasonable time, and it keeps the deadline after the January 15 final registration deadline before the traditional first weekend of regional tournaments.

ADVANCED WITH A POSITIVE RECOMMENDATION

TAC-05: Motion by Watt to change Rule 2.5(3), in part, as follows:

This does not apply if the school withdraws from regional competition within 28 days of the start of the tournament.

Rationale: Changed language in the rule is underlined. This motion changes the current language from 30 days to 28 days to make this rule correspond with our withdrawal penalties kicking in at 28 days.

ADVANCED WITH A POSITIVE RECOMMENDATION

Appendix B: Tabled Motions

CRC-01: Motion by Schuett (on behalf of Ben Sandlin) to amend Rule 8.9:

Rule 8.9 Invention of fact. In lieu of discovery, this rule shall govern the testimony of all witnesses.

* * *

(3) STUDENTS' OBLIGATIONS UNDER RULES 1.4, 1.5, 1.6, AND 7.6. Students should note that while the exclusive trial remedy for violating ~~this~~ **Rule 8.9(4)(a)(i)(A) or (B)** (impeachment) is explained below, an opponent's ability to successfully impeach a witness does not necessarily mean the witness has complied with this rule. Teams have independent professional and ethical obligations under Rules 1.4, 1.5, 1.6, and 7.6. An Improper Invention is cheating regardless of whether an opponent is successful in ~~demonstrating the violation~~ **an impeachment**. **Students should also note that, while an Egregious Improper Invention characterized by Rule 8.9(4)(a)(ii) has no effective remedy at trial because the aggrieved team would suffer greater prejudice by aligning the offending testimony with the affidavit, an Egregious Improper Invention under Rule 8.9(4)(a)(ii) carries possible sanctions to afford aggrieved teams greater protections from Egregious Improper Inventions.**

(4) IMPROPER INVENTION

(a) Definitions.

i. Non-egregious Inventions. There are exactly two types of **Non-egregious Improper Inventions which may only be remedied only at trial (impeachment) pursuant to Rule 8.9(5).**

(A) Any instance (on direct, cross, re-direct, or re-cross examination) in which a witness introduces testimony that contradicts the witness' affidavit **where the fact from the witness' affidavit is less prejudicial to the impeaching party's case than the offending testimony.**

(B) Any instance on direct or re-direct examination in which an attorney offers, via the testimony of a witness, **immaterial facts not included in or reasonably inferred from the witness' affidavit and documents with which the witness is familiar.**

ii. Egregious Inventions. There are exactly two types of **Egregious Improper Inventions which may be remedied at trial (impeachment) pursuant to Rule 8.9(5), and by post-tournament review pursuant to Rule 8.9(7).**

(A) Any instance (on direct, cross, re-direct, or re-cross examination) in which a witness introduces testimony that contradicts the witness' affidavit **where the fact from the witness' affidavit is more prejudicial to the impeaching party's case than the offending testimony.**

(B) Any instance on direct or re-direct examination in which an attorney offers, via the testimony of a witness, **material facts not**

included in or reasonably inferred from the witness' affidavit or materials with which the witness is familiar.

* * *

(c) Ancillary Terms.

i. **Material facts.** Facts are "material" if they affect the merits of the case and reasonably would have been disclosed in the Discovery devices used in each case. Facts are not "material" if they merely provide background information or develop the character of a witness or would not reasonably have been discovered. One test that judges and competitors can use to assess materiality is whether the facts at issue are of the type that could reasonably be expected to be included in the party's closing argument.

* * *

iv. **Offending testimony.** A witness' testimony which introduces testimony that contradicts the witness' affidavit or presents material facts not included in, or reasonably inferred from, the witness' affidavit.

v. **Prejudicial.** For the purpose of Rule 8.9, "prejudicial" refers to the harm a team suffers when aligning offending testimony with an impeached fact from an affidavit. The parties' substantive cases are based on the facts each party elects to present in its proof. The prejudice inquiry asks whether the fact, when aligned with the affidavit following a successful impeachment by contradiction, helps or hurts the impeaching party's substantive case compared to the offending testimony. The fact from the affidavit is less prejudicial to the impeaching party than the offending testimony where the impeachment substantively weakens the offending team's case, substantively strengthens the impeaching team's case, or impacts the credibility of the witness beyond the mere fact the witness was impeached. The affidavit is more prejudicial to the impeaching party's case than the offending testimony where the impeachment substantively strengthens the offending team's case, or weakens the impeaching team's case. The fact from the witness' affidavit is not more prejudicial to the impeaching team's case than the offending testimony only because the impeachment, in and of itself, fails to impact the impeached witness' credibility, or when the impeachment is merely ineffective.

(5) TRIAL REMEDY FOR VIOLATIONS OF RULE 8.9(4)(a)(i). If the cross-examiner believes the witness has made an Improper Invention as defined by Rule 8.9(4)(a)(i), the only available remedy is to impeach the witness using the witness' affidavit. Impeachment may take the form of demonstrating either (i) an inconsistency between the witness's affidavit and trial testimony ("impeachment by contradiction") or (ii) that the witness introduced material facts on direct or redirect examination that are not stated in or reasonably inferred from the witness's affidavit ("impeachment by

omission”). The cross-examiner is not permitted to raise an objection to the judge on the basis of “invention of fact.”

(6) POST-TOURNAMENT REVIEW.

(a) **Role of AMTA Representative** Notwithstanding Rule 9.2(1), an AMTA Representative may not impose any tournament penalty for an alleged **Improper Invention defined by violation of this Rule 8.9(4)(a)(i)**. However, if a team or AMTA Representative believes that a team has made an egregious Improper Invention **pursuant to Rule 8.9(4)(a)(ii)**, ~~it~~ **the team or the AMTA Representative** may report that allegation to the Competition Response Committee.

(b) Role of the Competition Response Committee.

(i) Complaints Based on Improper Inventions pursuant to Rule 8.6(4)(a)(i).

(a) No relief is available from the Competition Response Committee for a Non-egregious Invention under Rule 8.6(4)(a)(i).

(ii) Complaints Based on Improper Inventions pursuant to Rule 8.6(4)(a)(ii). In determining whether an Improper Invention **pursuant to Rule 8.9(4)(a)(ii)** is **sanctionable egregious**, the Competition Response Committee shall consider whether, based on the totality of the evidence, the **alleged** Improper Invention:

(a) is in fact an Improper Invention

- i. pursuant to Rule 8.9(4)(a)(ii)(A) by comparing the prejudice to the aggrieved team’s case resulting from the offending testimony compared to the affidavit or other materials; or**
- ii. pursuant to Rule 8.9(4)(a)(ii)(B) by determining the invented fact affected the merits of the case and reasonably would have been disclosed in the Discovery devices used in each case; and**

(b) additionally constitutes an ethical violation under Rule 1.4, 1.5, 1.6, and/or 7.6. Factors that may be considered in determining whether the Improper Invention pursuant to Rule 8.9(4)(a)(ii) constitutes an ethical violation include, but are not limited to, the degree to which the impeachment was prejudicial to the aggrieved team as defined by this Rule; the significance of the invented material fact(s) to the case at hand; use of the material fact(s) elicited through the Improper Invention in closing arguments; repeated use of the same or similar Improper Invention in multiple trials; and any other evidence of prior planning or premeditation by the attorney(s) and/or witness(es) to knowingly engage in an Improper Invention and use the material fact(s) introduced thereby to gain an unfair advantage at trial.

(c) Good Faith as a Defense. Conduct of a team or competitor who, acting in good faith, commits an Egregious Invention as defined by Rule 8.6(4)(a)(ii), but did so by the competitor’s error, faulty memory of the

case materials, or otherwise acted in good faith shall have an absolute defense to sanctions resulting from the Competition Response Committee's investigation.

* * *

RATIONALE:

This amendment seeks to supplement existing definitions of the Improper Invention Rule. In the 2017-2018 competition season, the Competition Response Committee ("CRC") sanctioned teams for egregious improper inventions. While the standard is objective, the Rule lacks a definite method to determine what is objectively egregious. These Proposed Amendments add methods and metrics, and clarify what inventions may be investigated.

The Proposed Amendments are additive and build on the foundation of the existing Rule.

Proposed Rule 8.9(a) defines both egregious and non-egregious inventions to provide greater clarity of what inventions are permissible. The Proposed Amendments show participants what the appropriate remedy is for each kind of invention: either impeachment or complaint to the CRC. Proposed Rule 8.9(a) is aimed mostly at new participants or teams to assist them in understanding the difference and avenues for relief of each kind of invention.

First, there are two amendments to egregious inventions by contradiction: prejudice, and balancing the prejudicial effect of the impeachment.

Proposed Rule 8.9(4)(c)(v) defines the "prejudice" metric. A balance of prejudice determines whether an Improper Invention by Contradiction is non-egregious pursuant to Proposed Rule 8.9(4)(a)(i)(A) or egregious pursuant to Proposed Rule 8.9(4)(a)(ii)(A). The question of prejudice balances whether a judge will be confused by the attempted impeachment, and is designed to offset a judge's erroneous point deduction from an impeaching team despite a factually correct impeachment. Prejudice only relates to Egregious Inventions by Contradiction, Proposed Rule 8.9(4)(a)(ii)(A), and the CRC's investigative role, Proposed Rule 8.9(6)(b)(ii).

Proposed Rule 8.9(4)(a)(ii)(A), egregious inventions by contradiction, defines egregious inventions which have no remedy at trial because the aggrieved party cannot reasonably impeach the witness with case materials. This is true in practice. In a hypothetical case, a witness invents a fact which is contradictory to the case materials; but the aggrieved team knows impeaching the witness with the case materials offers the aggrieved team a substantively worse-off position than if they allow the witness to continue with the invention. Such a result is undesirable because an impeachment by contradiction where the offending testimony is aligned with a more prejudicial fact from the impeaching team confuses judges. Such confusion may result in the judges deducting points from the impeaching team instead of the

offending team. Therefore, when offending testimony should be impeached but the impeachment may result in a worse score for the impeaching team because of the facts of the case, the invention is egregious under these Proposed Amendments.

Second, there are two amendments to egregious inventions by extrapolation: incorporation of discovery devices, and whether the discovery devices would have discovered the egregious extrapolation.

Proposed Rule 8.6(4)(c)(i) adds reference to discovery to the definition of an egregious extrapolation. A material fact should have reasonably been discovered; such is the discovery obligation of a litigant. Proposed Rule 8.6(4)(c)(i) reflects that.

Proposed Rule 8.6(4)(a)(ii)(B), egregious invention by extrapolation, deals with egregious inventions which have no remedy at trial because the discovery devices used are insufficient to reasonably discover the invented fact. Assuming a hypothetical invented fact is relevant (and non-privileged), it should have been discovered. Assuming broad discovery devices were used, the relevant fact should have been discovered; but in an egregious extrapolation, the party withheld the information. This is also an undesirable result. In practice, such a discovery dispute may result in an ethical violation, fee payments, or other sanctions. Therefore, the definition of a “material fact” and an egregious invention by extrapolation has been supplemented to include reference to discovery. Where a fact should have been discovered through the provided discovery device, the fact is material and the invention is egregious.

Finally, the Proposed Amendments clarify the Competition Response Committee’s role in an egregious invention investigation under Rule 8.9(6)(b). First, the Competition Response Committee shall not investigate a non-egregious invention; this aligns with past years’ practice, but clarifies the Rule for new participants and teams. Second, the Competition Response Committee shall investigate egregious inventions by the same process as before these proposed amendments.

The Proposed Amendments only delete one clause from Rule 8.9(6)(b): that the CRC should weigh “the significance of the invented material fact(s) to the case at hand” to determine whether the invention is sanctionable. This clause was removed to add the preceding clause, which brings the terms used in the stricken clause up to speed and in conformity with the Proposed Amendment’s language, particularly with respect to “prejudice” as defined in the Proposed Amendments. The intent of the Proposed Amendment and the stricken language noted here is to maintain the status quo of the CRC’s operation, and only is a change in terms used.

There is a foreseeable situation where a team makes an egregious invention which prejudices the impeaching party more than the invention itself by mistake and in good faith. Proposed Rule 8.9(6)(c) protects such an error. The proposed Rule seeks to protect students from AMTA sanctions where, despite having egregiously invented a fact by Rule, the competitor or competitors responsible for the invention made a good faith error. The most common application of this defense would be where a competitor forgets what the witness’ materials state on a fact, goes with a gut feeling, and their

gut feeling is wrong. While the good faith defense does not impose an intent element to the Competition Response Committee's investigation, it provides a defense to such a good faith error.

Even with these additions, the Proposed Rules retain the core of the improper invention procedure and strengthen the skills AMTA seeks to foster in students.

The Proposed Rules retain impeachments by contradiction and omission as the bread and butter of a competitor's response to a non-egregious invention. Indeed, impeachments are the competitor's only response to a non-egregious invention.

The Proposed Rules also retain reasonable inferences by striking a balance between what should have been discovered and what was discovered. For example, where a deposing attorney fails to ask a critical question of a deponent, the Proposed Rules do not forbid the student from reasonably inferring what the answer to that unasked question would have been. The doctrine of reasonable inferences remains in place, but the Proposed Rules add guidance to whether a fact is material based on the available discovery.

The Proposed Rules provide students greater latitude in deciding how they want to present their case. Under Proposed Rule 8.9(4)(a)(ii)(A), for example, it may be more advantageous—and earn the aggrieved team more points—to adopt the substantively helpful invention instead of impeaching or complaining about it. And under Proposed Rule 8.9(4)(a)(ii)(B), the aggrieved team may earn more points by pointing out the witness' improper discovery responses instead of complaining of the invention. Therefore, through these Proposed Amendments, improper inventions come closer to reality. An attorney who uses the wrong discovery device or finds a person has failed to uphold their discovery obligations must critically analyze the best strategy to remedy the situation. An attorney presented with a witness who changes testimony must critically analyze how the testimony impacts the attorney's case. These Proposed Amendments allow competitors to engage in the same level of thought, but also retain the Competition Response Committee as a final check to ensure fairness in presentation if the aggrieved team fails to capitalize on the opportunities presented by the offending team.

EC-03: Motion by Holstad to Amend Rule 9.6

Rule 9.6 Sanctions Procedures.

(6) Publishing of final sanction. Upon either the expiration of the time to appeal a sanction to the Executive Committee or the decision of the full Board imposing a sanction, the Secretary shall create a public version of the sanction ~~which does not identify the sanctioned school or individual by name~~, and cause such public version to be posted on the AMTA website and other public channels. **The public version of the sanction shall not identify any individual by name.**

Rationale: I understand the desire to protect students from individual attention, but it is unclear why a program sanction should remain anonymous. Keeping school anonymity is near impossible, and the mandate to maintain school anonymity causes unnecessary headaches in terms of applying sanctions by giving a program a potential ground for appeal of a sanction that was not intended by the anonymity provision.

EC-04: Motion by Holstad to Amend Rule 10.3.5(1)

(1) COMPOSITION. The Competition Response Committee ("CRC") shall consist of a chair, the Tournament Administration Committee Chair, the Rules Committee Chair, the Case Committee Chair for the current case problem, **the Ethics Committee chair**, the Ombudsperson and the President.

Rationale: The Ethics Committee should have a larger role in decisions that will likely implicate inherent ethical issues impacting our organization. In addition, adding one more person to the CRC will result in a seven-member committee and eliminate the possibility of tied votes.

EC-06: Motion by West to amend Rule 9.5 (3):

(3) AVAILABLE SANCTIONS. Possible sanctions include but are not limited to:

- (a) written warning or reprimand;
- (b) probation;
- (c) loss of bid eligibility;
- (d) fines and/or restitution;
- (e) suspension of a coach or team member;
- (f) suspension of school membership;
- (g) loss of bids;**
- (h) loss of eligibility to compete in the final round of the National Championship Tournament;**
- (i) loss of recognized placement at the National Championship Tournament.**

Rationale:

Our current available sanctions leave AMTA with limited recourse against misconduct by graduating students, especially for conduct occurring at the National Championship Tournament. The underlying issue, however, is in having an exclusive list of potential sanctions. It seems inevitable that situations will arise in the future that are best remedied in a way not accounted for in any exclusive list. As a result, this proposal seeks to establish that AMTA is not limited to the listed sanctions. Although technically unnecessary, it also expands the list of sanctions in order to better put graduating students on notice of potential remedies for misconduct.

To the extent that anyone is concerned about new sanctions being created without due consideration, I'll note that any sanctioned team has the right to appeal to the whole board for de novo review, and that the board can then debate the appropriateness of the new sanction.

RULES-08: Motion by Watt to change Rule 3.15, in part, as follows:

Rule 3.15 Substitutions in case of illness.

(1) GENERAL RULE. If a participant becomes too ill to compete **after a sanctioned tournament has started**, the affected team may use a permissible substitute. If no permissible substitute is available, or the team chooses to not use a permissible substitute, the judges shall enter a zero for the role(s) and the trial will proceed.

Rationale: This motion is intended to clarify that this rule is meant to only apply once a tournament has started. This season we received requests based on illness for issues that occurred weeks in advance of a tournament, which should not be the intent of this rule. This is meant only to apply if someone becomes sick during the tournament to allow the team to compete and finish the weekend. This motion clarifies that intent.

TAB-01: Motion by Bernstein (on behalf of Rick Lewkowitz) that the first round draw at Nationals will be accomplished in such a manner that steps will be taken to avoid the selection of two teams from the same region competing against each other in that first round.

Rationale (Rick's): It's pretty frustrating to travel 3000 miles at great expense and effort only to end up facing in the first round a team that is situated less than 90 minutes drive from our campus and a team that we faced both in our Regional and in our ORCS. This has happened before and will likely happen again in the future if something like the below proposal is not adopted by AMTA. It is important to note that the below proposal does not pertain to Rounds 2, 3, 4, or the championship round.

TAC-02: Motion by West to direct the Judge Recruitment Subcommittee to address diversity in AMTA tournament judging pools.

Rationale

Diversity in AMTA judging pools has become a source of increasing controversy in the past several years. Although AMTA does not have the resources to run judge recruitment efforts on behalf of all of our host schools, the newly created Judge Recruitment Subcommittee is well-positioned to monitor our hosts' recruitment efforts, provide advice concerning the creation of representative judging pools, and provide more direct assistance where resources allow.

TFC-08: Motion by Parker to modify the Championship Series structure as follows:

(1) Split the National Championship Tournament (NCT) into two sites, each hosting a division of 32 teams (for a total of 64 bids to NCT). A two-round National Championship Final (NCF) between the two division winners would then take place at a time and place selected by the Tournament

Administration Committee after consultation with the division-winning teams. The date of such a final round must be prior to the August 15 case-release date for the following season. If a location and/or date cannot be agreed upon, TAC may declare the teams co-champions.

(2) Authorize TAC to add a tenth 24-team ORC if it determines that sufficient sites and hosts are available. This would increase to 240 the number of teams reaching ORCs, slightly more than 1/3 of AMTA's overall number of teams. With 64 teams qualifying to NCT, a tenth ORC would allow 6 teams from each of the 10 ORCs to qualify for the NCT via direct bid. After the 60 direct bids are awarded, any host bids under Rule 6.8(2) would be awarded next, and then any remaining bids to NCT would be filled using the open-bid list.

Rationale:

As the number of teams competing in AMTA tournaments steadily increases, keeping the number of NCT bids at 48 results in a lower percentage of AMTA teams qualifying for the NCT each year. Increasing the NCT to 64 teams will bring AMTA back to having roughly the top 10% of teams at the NCT and 33% of teams at ORCs. Since it will be extremely difficult to find a single site capable of hosting a 64-team tournament, this proposal splits the NCT between two 32-team sites.

In addition to being a practical necessity with two geographically separated NCT sites, a two-round National Championship Final will reduce the chance that an imbalanced NCT case gives one team an advantage in the final round based on which side it portrays. In addition, the NCT Case Committee would have time to address any necessary case modifications (e.g., special instructions to eliminate unforeseen problems) based on how the case plays at the NCT.

Having 32 teams at each NCT site has the added benefit of allowing, should AMTA choose to do so, a true bracketed tournament for the NCT, with 4 rounds culminating in a semifinal fifth round at each site, and the winner of that fifth round proceeding to the National Championship Final (NCF). (A bracketed NCT proposal is not itself included in this motion, but could be added by amendment or a later motion if there is sufficient interest in it.) Awarding any "host bids" (see Rule 6.8) prior to open bids for NCF would keep the overall field at 64 teams, maintaining the two 32-team fields and thus the bracketing option.

TAC would be charged with determining a fair method for working out the location of the NCF in consultation with the two NCF teams. TAC could, for instance, put together a list of proposed sites for a 2-round championship, and allow the two National Championship Finalists to rank their preferences in order. TAC could also offer the site and dates of the AMTA Annual Meeting as an option. If TAC determines after consultation with the teams that meeting for the National Championship Final is not feasible, TAC would be authorized to declare the two National Championship Finalists co-champions.

The Tabulation Committee would need to examine its tiebreaker system to determine if any modifications are needed to determine the winner of the two-round National Championship Final in the event that the two teams win an equal number of ballots.

TFC-09: Motion by Harper re: Six Bids Per ORCS

Motion to add a sixth bid to each ORCS site and a resulting National Championship Tournament of 56 teams.

Rationale: We are growing rapidly, and at present, we do not have a good mechanism to account for that growth. It strikes me as unimaginable that we had six-win ORCS teams sitting out the National Championship Tournament. This motion would hopefully provide each team with a record of six or more at ORCS the opportunity to compete at the NCT.

TFC-10: Motion by Harper (on behalf of Rodgers) re: Tournament Competition Realignment

Motion to change the competitive tournament structure as follows for the reasons stated below. Currently AMTA has an overarching national board with individual hosts supporting the tournaments. Due to the increased growth in competing schools, and lacking interest in hosting, AMTA should create multi-state regions supported by a regional board with appointed members in that specific region. For example, Minnesota, South Dakota, North Dakota, Wisconsin, Iowa, and Illinois would constitute a region, and within that region there would be in essence a mini board to run the tournaments within. Those specific tournaments are described below.

Within each region, which should be determined by number of competing schools and strength of competition, the regional board would set a competitive schedule as follows:

-multiple regional tournaments. If you take the example above-we would host 3 smaller regional tournaments put on completely by the regional board. The specific number of tournaments can be flexible to the number of teams within the region. The regional board would be in charge of finding hosts and providing the necessary support. These tournaments can happen at the end of Jan/beginning of February.

-super regional tournaments. The top number of teams (specific number TBD) go to a super regional still hosted within that region. The regional board again would be in charge. These tournaments would take place at end of February or beginning of March.

-regional championship-Again the top number of teams (specific number TBD) go to a regional championship. The regional board again would be in charge. This tournament would take place at the end of March.

Out of the regional championships-1-2 teams would go to a smaller national tournament (24 teams) which would take place in the middle to end of April.

Rationale: This would allow the individual regions to take charge of their competitive schedule while allowing more teams to advance further into the competitive season. As such, smaller schools and their coaches could be more invested as it would directly affect their students. Additionally the regional board could work to build relationships with local and regional organizations both from a philanthropic and fundraising perspective while taking the pressure off the national board.

AMTA would still have its national board, which each regional board would report to. At the same the national board could focus on setting standards regarding rules and competition, building relationships, planning the national tournament, and advance the overarching direction of the organization.

Appendix C: December 2018 Mid-Year Board Meeting Minutes

I. Call to Order

Attendance:

Members present (24): Ben-Merre; Braunsberg; Detsky; Eslick; Gelfand; Guliuzza; Halva-Neubauer; Harper; Haughey; Heytens; Holstad; Langford; Leckrone; Michalak; Minor; Olson, J.; Parker; Pavely; Racheter; Schuett, N.; Walsh; Warihay; West; Woodward
Members not present (6): Allison; Bernstein; Bluebond; Leapheart; Schuett, M.; Thomason
Candidate Members present (4): D'Ippolito; Johnson; Olson, B.; Sohi
Candidate Members not present (2): Hogan; Ritter
Staff & Guests (1): Doss
Directors Emeritus (0):

II. Welcome and Remarks (Warihay)

III. Format of Agenda:

Delivered by Secretary – Pavely

All motions submitted were referred to the corresponding AMTA Committee pursuant to the policy adopted by the Board in 2007 (Rule 10.2.1). All motions are referenced numerically by the abbreviation of the AMTA Committee to which the motion was referred (e.g. EC-02 or TAB-03). The Committees had the option of tabling the motion, amending the motion or substituting the motion. Tabled motions retained their original designations, but are provided in an appendix. Motions could be advanced with recommendation or without. The final motion agenda order was subsequently set by the Executive Committee (AMTA Bylaws, Section 10.2.1) (Subject to agenda amendments made at the board meeting).

Motions appear in red and bolded. The decision of the respective committees follows each motion **IN BOLD BLUE, CAPITAL LETTERS AND UNDERLINED**. Motions that have been recommended by committee do not need to be seconded at the meeting. Motions forwarded without recommendation require a second. For a motion to be adopted, it must have received a majority of the votes cast at a meeting at which quorum is present. (AMTA Bylaws, Section 4.10). Motions to amend the Bylaws required an affirmative vote of two-thirds of the Voting Directors (AMTA Bylaws, Section 8.02)

Appended to the Agenda as **Appendix A** is the Consent Calendar

Appended to the Agenda as **Appendix B** is a list of tabled motions. These motions were tabled by the reviewing committee and will not be considered by the Board for action. To “untable” a motion, five or more members of the Board (not including the motion’s

author(s)), must request that the motion be considered. If such request is made, the full Board may vote on whether to overturn the Committee’s recommendation to table. A motion to overturn the Committee’s recommendation to table must be passed by a majority vote of the Board. ***Taking a motion off the table and placing it on the agenda alone does not result in adoption of the motion.*** A separate vote will be necessary on whether to adopt the motion.

Appended to the Agenda as **Appendix C** are the minutes from the 2018 Board Meeting.

IV. Approval of Agenda

Motion to approve the agenda. Seconded. **Motion passes.**

V. Approval of 2018 Board of Directors Meeting minutes.

Motion to approve the minutes. Seconded. **Motion passes.**

VI. Consideration of Tabled Motions

For procedure to “untable” a motion, please see discussion of Appendix B above. If a motion is “untabled”, it will be taken up in the order it would have appeared in the Agenda. (i.e. EC-05 would be discussed after EC-04).

VII. Approval of Consent Calendar (attached as Appendix A)

Motion to approve the consent calendar. Seconded. **Motion passes.**

VIII. Committee Reports

- U. Academics Committee (Leapheart): Written report**
- V. Accommodations (Olson): Written report**
- W. Budget Committee Report (Eslick): Oral report; Audit committee report by Pavely**
- X. Civil Case Committee (Gelfand): Written report**
- Y. Criminal Case Committee (Bluebond): Written report**
- Z. Competition Response Committee (Harper): Written and oral report**
- AA. Development Committee (Bernstein): Written report**
- BB. Disciplinary Committee (Guliuza): Oral report**
- CC. Ethics Committee (Langford): Written and oral report**
- DD. Human Resources Committee (Pavely): Oral report**
- EE. New School Recruitment and Mentorship Committee (Harper): Written report**
- FF. Rules Committee (Walsh): Written report**
- GG. Strategic Planning Committee (Walsh): Oral report**
- HH. Tabulation Advisory Committee (Woodward): Oral report**

- II. **Tournament Administration Committee (Schuett, M.): Written report; oral report from Harper regarding AMTA Rep assignments**
- JJ. **Tournament Futures Committee (Ad Hoc) (Bernstein): Written report**
- KK. **Website, Marketing and Social Media Committee (Michalak): Oral report**
- LL. **Other Committee Reports:**

IX. Motions:

There are no motions on the main agenda.

X. Unfinished/New Business

Warihay reported on the status of the NCT in Philadelphia in 2019 and the status of the website project.

XI. Adjournment

Motion to adjourn. Seconded. **Meeting adjourned.**

Appendix A: Consent Calendar

EXECUTIVE COMMITTEE-01: Motion by Warihay and Walsh to Amend Rule 3.6(1)(a) Regarding Eligibility:

That Rule 3.6(1)(a) be amended as follows

Rule 3.6 Student eligibility requirements.

(1) GENERAL RULE. A student is eligible to compete at sanctioned tournaments if and only if s/he:

- (a) is a qualified student, **as the term is defined in Rule 3.6(2), and competes only for the school where the student is then qualified;**
- (b) has not taken and is not enrolled in classes at a law school (other than those for which only undergraduate credit is received), and
- (c) has not already participated in sanctioned tournaments in five separate years.

Rationale: A question about the eligibility of a student described as someone who will graduate in December 2018, who will not attend graduate or law school during the winter and spring of 2019, and whose school will allow him to continue to compete in the spring of 2019, making him a “qualified student” as defined by the Early Graduate Rule. However, because the General Rule requires a “qualified student” to be enrolled on the first day of a sanctioned tournament, the student would not be able to compete. It struck us that this was a gap in the eligibility rules that was not intentional, and this motion seeks to close that gap to allow students like this to compete in the spring following early graduation without being enrolled at the school from which they graduated.

ADVANCED WITH A POSITIVE RECOMMENDATION

RULES-01: Motion by Warihay and Walsh Regarding Discontinuing the Use Of, and Removal Of References To, the Midlands Rules of Criminal Procedure.

That the Midlands Rules of Criminal Procedure be removed from the AMTA universe of documents, and that references thereto in the AMTA Rulebook and any other AMTA document be removed.

Rationale: The AMTA Rulebook currently references a document entitled the Midlands Rules of Criminal Procedure. In reviewing the Rulebook for purposes of updating it after the Summer Board Meeting, I came across the reference to this document and learned that it purports to “govern the procedure in all criminal proceedings in the State of Midlands.” Neither of us knew of its existence, nor were we aware of its usage in recent years; rather, the most recent criminal cases include rules and stipulations

that govern matters like the Defendant's presence (or lack thereof) at trial, pretrial questioning of the Defendant(s), and the like. As a result, and to avoid both conflicts between those in-case rules and the Midlands Rules of Criminal Procedure, it is time to remove references thereto in the AMTA Rulebook and anywhere else they might be referenced, as well as to announce that they no longer govern our criminal proceedings.

ADVANCED WITH A POSITIVE RECOMMENDATION

Appendix B: Tabled Motions

EXECUTIVE COMMITTEE-02: Motion by Gelfand (on behalf of Drew Evans):

3.6.1 Team Composition (2) (b) Subsequent registration of program. .

In the event that the Executive Committee grants an exception under Rule 3.6.1(2), that exception becomes void **for all future years** if the school in which that exempted student is actually enrolled registers to compete before the expiration of the registration deadline. **Students already on the team may complete their collegiate eligibility with either their current team or their home institution.** If the school registers after the expiration of the deadline, then the exception may remain in effect.

Rationale: Just because a new team is started doesn't mean that all current members want to move to their home school, nor does it mean that they were consulted or considered throughout the process, and those students shouldn't be forced to join a team that they didn't want to. The choice should be theirs, if they want to have their own team, they should be allowed to do so, but if they have made friends on their current team or simply wish to continue competing with their current team they should be allowed to do so. Note that this doesn't allow for the continual recruitment of members from the new team, only for the members already on the old team to not be forced into an unsafe, hostile, and/or generally unreasonable situation. Please consider the situation in which a new team is formed and already has the maximum 10 participants, if additional members have to be added from the old team, there is quite literally no way for them all to compete.

Appendix C: 2018 Board Meeting Minutes [Omitted]