



American Mock Trial Association

2010 Mid-Year Board Meeting Minutes

Conference Call

November 13, 2010

I. Call to Order

A. Saturday afternoon attendance:

Members present (23): Bernstein, J.; Bloch, B.; Butler, J.; Detsky, A.; Eslick, M.; Guliuzza, F.; Halva-Neubauer, G.; Haughey, D.; Heytens, T.; Holt, O.; Kelly, M.; Leckrone, J.; Lyons, K.; Nelmark, D.; Neuhaus, ML; Pohlmann, M.; Racheter, D.; Schuett, N.; Scott, J.; Vile, J.; Wagoner, J.; Woodward, J.; Zeigler, S.;

Members not present (6): Calkins, R.; Cross, D.; Hawley, A.; Langford, B.; Seelau, R.; Stewart, F.;

Candidate Members present (7): Cool, J.; Creed, H.; Eisner-Grynberg, M.; Palmer, J.; Satler, J.; Stahl, R.; Walsh, M.;

Candidate Members not present (1): Smith, A.;

Staff, Guests & Counsel (1): Freixes, G. (legal counsel);

II. Welcome and Remarks

Delivered by President - Nelmark, D.,

III. Format of Agenda:

Delivered by Secretary – Detsky, A.

All Motions are referenced numerically by the initials of the AMTA Committee responsible for review (e.g. EC-2 or TAB-3). The agenda was set and approved by the Executive Committee pursuant to AMTA Bylaws section 3.03.

IV. Approval of Agenda

Motion to amend agenda to add vote to approve the revised rulebook which has been updated to reflect the rules passed at the 2010 summer Board Meeting.

Seconded.

Motion passes.

**Motion to otherwise approve agenda.
Seconded.
Agenda approved.**

V. Approval of 2010 Board of Directors Meeting minutes.

**Motion by Detsky, A. to approve 2010 Board of Directors Meeting minutes.
Seconded.
Minutes approved.**

VI. Elections:

Election of At-Large Member to Disciplinary Committee.

Nomination of Scott, J.

**Motion to approve nomination and elect Scott, J. by Nelmark, D.
Seconded.
Motion adopted.**

VII. Consideration of Tabled Motions:

None.

VIII. Committee Reports

- A. Budget Committee Report (Eslick, M):**
- B. Criminal Case Committee (Butler, J and Parker, T):**
- C. Civil Case Committee (Heytens, T)**
- D. Development Committee (Palmer, J):**
- E. Ad Hoc Committee on Religious Accommodation (Freixes, G):**
- F. Rules Committee (Bernstein, J):**
- G. Strategic Planning Committee (Pohlmann, M):**
- H. Tabulation Advisory Committee (Lyons, K):**
- I. Tournament Administration Committee (Woodward, J):**
- J. Other Committee Reports:**

- i. Ad Hoc Judges Committee (Schuett, N) (see Appendix A)
- ii. Ad Hoc Committee on Invitational Tournaments

IX. Motions:

A. Budget Committee

BUD-01

Motion by Eslick, M. to amend budget.

Seconded.

Motion adopted.

B. Case and Evidentiary Committee:

None

C. Executive Committee:

EC-01

Motion by Lyons, K to create rule 2.10(5) and amend 2.10(1) as follows:

That, effective beginning with the 2011-2012 season, Rule 2.10(5) be created to read:

(5) License for invitational tournaments. A school shall purchase a separate license if the school uses the case in conjunction with hosting an invitational tournament. Only invitational tournaments that include more than eight teams from more than three schools shall be subject to this rule. The license fee shall be \$500.00. The Executive Committee shall waive the license fee if the school will host a sanctioned tournament during the same academic year. The Executive Committee may, by its majority vote, waive or reduce the license fee upon application of a school for good cause shown. Good cause may include, but is not limited to, the absence of any fees charged to attendees of an invitational tournament. Revenues from the license fee shall only be used for AMTA Regionals and ORCS Tournaments.

That, effective beginning with the 2011-2012 season, Rule 2.10(1) be amended to add the following:

"Payment for school registration does not include a license to use the case for invitational tournaments as described in Rule 2.10(5)."

Seconded.

Motion fails.

EC-02

Motion by Detsky, A. to create a new rule as follows:

That if a school has not registered in the previous four seasons (or longer) it is eligible to obtain the "new school" discount. Example: a school registering in 2010-11 is eligible for the reduced fee if it has not registered since the 2005-06 season.

Rationale: This has been our practice, but it is not currently codified in the Rulebook.

Motion by Racheter, D. to amend so that the rule reads "five seasons" (rather than "four")
Seconded
Motion to amend approved.

Motion as amended adopted.

EC-03

Motion by Detsky, A. to create a new rule as follows:

That if a school has not registered in the previous four seasons (or longer) any fines or penalties owed by the program are wiped out and the program can begin with a clean slate.

Rationale: After four years, no one who incurred the penalty is still present and it does not make sense to impose an additional financial program to a new school trying to get registered.

Motion by Woodward, J., to amend so that the rule reads "five seasons"
Seconded
Motion to amend approved.

Motion as amended adopted.

EC-04

Motion by Detsky, A. to create a new rule as follows:

That the "new school" discount be changed so that program registration is \$350 (same as returning schools) but that a new school gets one free team at regionals in its first year. This free regional registration could be "rolled over" if not used and if timely canceled before the penalty phase kicks in.

Rationale: Many new schools register for competition but don't end up competing their first year. Our practice has been to let them keep registering as a new school until they actually compete. This is unfair to the programs that register only for case access as they pay \$350 annually, but the perpetual "new schools" end up paying only \$200 for the same access. This policy as amended continues to give schools a break in their registration costs, but does so in a more equitable manner. It will also be less confusing as there will be one, consistent, program registration fee.

Motion by Scott, J. to table to Summer 2011 Board Meeting.
Seconded.
Motion tabled until Summer 2011

EC-05

Motion by Woodward, J. to amend the “Primary Contacts” rule as follows:

That the policy on "Primary Contacts" be changed so that the Primary Contact need not be an educator coach.

Rationale: This rule does not work in practice as many teams are student run and do not have educator coaches. AMTA makes sure that the team is recognized by the school, but there is often no faculty member responsible for day-to-day oversight of the team. Communications should go to the person who is most directly in touch with team members regardless of that person's role.

Motion by Woodward to substitute in new language.

Seconded.

Motion to substitute approved. New motion reads as follows:

- (4) Persons who may not sign letter. A school authorization letter is not sufficiently signed by any of the following:
- (a) A person holding the title or rank of part-time faculty, adjunct faculty, instructor, lecturer, or other equivalent titles;
 - (b) A person not employed by the school or not permitted by the school to act on behalf of the school;
 - (c) A person who is an undergraduate student or law student at the school and does not meet any of the credentials in sub. (3).
- (5) Filing, duration. Each school shall file its letter with the AMTA office by mail, facsimile, or by sending a scanned copy of the original via e-mail. The letter shall remain valid indefinitely until any of the following occur:
- (a) The school revokes the letter;
 - (b) The person signing the letter ceases to be affiliated with the school;
 - (c) The school does not register for two consecutive academic years;
 - (d) AMTA requests the school to file a new letter of authorization.
- (6) Interpretation. AMTA's Executive Committee is empowered to interpret and determine compliance with the provisions of this rule and grant such relief as it may deem necessary.

B. That Rule 3.7 be amended to delete the words "Educator Coach."

RATIONALE

Our current rules establish a distinction between "Educator Coaches" and "Primary Contacts," and generally require student-run programs to submit a letter of authorization from a school administrator. The current state of the rules is not optimal for several reasons.

1. Student-run teams skirt the letter requirement by naming an "Educator Coach" who really isn't. Many schools list as "Educator Coach" a law student, attorney coach, or other person who doesn't really have an official affiliation with the college or university. Likewise, some mock trial coaches hold limited-term, limited-scope appointments as adjunct/lecturer/etc; however, those relationships are typically not sufficient to allow the faculty member to act on behalf of or bind the institution. AMTA's goal is to have an "official" point of contact within the school for emergencies or major issues. That's not happening right now in all instances.
2. Some schools have an "Educator Coach" who isn't always the best contact person. Many schools with an "Educator Coach" nevertheless

Seconded.
Motion as amended adopted.

D. Rules and Sanctions Committee:

RSC-01:

Motion by Woodward, J. to amend Rule 8.12(1) by deleting the struck-through text and inserting the underlined text:

(1) When objections are permitted and prohibited. Objections are permitted during the examination of witnesses but not ~~during~~ at any time regarding the content of the opening statements or closing arguments.

Rationale: I have encountered disputes concerning objections raised after a closing argument has concluded, e.g. "I was not permitted to object during closing argument, but had I been allowed to, I would have objected to facts not in evidence." The current language of the rule does not explicitly prohibit objections before or after a statement or argument. This amendment would remove that ambiguity. (On the other hand, if the Board feels such objections are necessary or a good idea, I would argue we should permit them during the statements or arguments.)

Motion by Butler, J. to amend by striking the words "Regarding the content"

Seconded

Motion to amend approved.

Motion by Heytens, T to refer to Competition Response Committee.

Seconded.

Motion fails.

Motion as amended adopted.

E. Strategic Planning Committee*:

Motion by Guliuzza, F. to address all SPC motions together.

Seconded

Motion approved.

Motion by Guliuzza, F. to sever SPC-03 from the above motion.

Seconded

Motion approved.

SPC Motions 1, 2, 4, 5, 6, 7, 8, 9, 10 adopted.

SPC-01

Motion by the SPC to amend the Code of Conduct as follows:

(1) Preamble: "Covered persons" is not meant to include judges or tournament hosts.

Rationale: One of the characteristics that makes them different is that they do not have any organizational decision-making authority. AMTA neither recruits, selects, nor has any realistic means to control or discipline them. Hosts present a closer call because AMTA does select them and they are subject to the direction and control of the AMTA reps in terms of tournament

matters. It seems impractical and unwise to treat hosts as Covered Persons, however. Many (if not most) hosts are inevitably and by necessity coaches for teams competing at a given tournament. But if hosts are covered persons, then Rule 2(a) would seem to bar a coach who is also the parent or older sibling of a competitor from serving as a regional host at which that competitor competes. In addition, if hosts are Covered Persons, then does a coach/host having dinner with her team constitute "fraternization" that could reasonably create an actual or apparent conflict of interest"? And, if it doesn't, wouldn't the argument be that everyone already knows that coach-hosts inevitably have a conflict-of-interest vis-a-vis their own team -- which is a big reason for having reps in the first place? Also, if hosts are Covered Persons, wouldn't every host be required to complete the Conflict of Interest form?

SPC-02

Motion by the SPC to amend the Code of Conduct as follows:

Subsection 3a: Add "disability" to our list of unacceptable forms of discrimination and harassment.

SPC-03

Motion by the SPC to amend the Code of Conduct as follows:

Subsection 6d: Covered persons can't receive goodies from participants, teams and colleges – except their own institution.

Rationale: A Board member is always a CP. And unlike Sections 1, 2, 4, and 6(c), the provisions of Section 6(d) (i.e., the gift prohibition) are not preceded by the words "while serving in an official capacity." Consequently, we should specify that this is not meant to keep coaches from receiving forms of remuneration from their own schools.

Motion by Guliuzza, F. to refer to committee.

Seconded

Motion fails.

Motion adopted.

Committee charged to address issues raised with regard to rule at next Board Meeting.

SPC-04

Motion by the SPC to amend the Code of Conduct as follows:

Subsection 8d1D: Delete category altogether to avoid the risk of the Disciplinary Committee becoming an ad hoc body geared to the case at hand.

SPC-05

Motion by the SPC to create Rule 8d1 in the Code of Conduct as follows:

New 8d1: Members of the Disciplinary Committee will be appointed at the annual board meeting and include (A) the Past President of the AMTA, who shall serve as the Chairperson of the Disciplinary Committee, (B) one appointee of the current President, who shall not concurrently serve on the Executive Committee, (C) one person elected at large by the Board, who shall not concurrently serve on the Executive Committee. The Board of Directors shall also elect an

alternate who shall not be a member of the Executive Committee. Should a member of the Disciplinary Committee need to recuse him/herself from review of a complaint, the alternate shall serve. Should the board-elected alternate be unable to serve, the President shall appoint an alternate who shall not concurrently serve on the Executive Committee.

SPC-06

Motion by the SPC to create a new 8d subsection to the Code of Conduct as follows:

Add an 8d subsection indicating that the members of the Disciplinary Committee would serve one-year terms, although people could be re-appointed or re-elected for additional years.

SPC-07

Motion by the SPC to add new subsection 8e to the Code of Conduct as follows:

Add an 8e subsection specifying that the Past President does not cast a vote both on the Disciplinary Committee and the EC as well.

SPC-08

Motion by the SPC to add 8e subsection to the Code of Conduct as follows:

If proposal #7 passes and the Past President does not vote in the EC appeal, then add an 8e subsection specifying that the President should have a real vote and not just one in case of a tie.

SPC-09

Motion by the SPC to amend the Code of Conduct as follows:

Amend the 8e so that it only takes a 2/3 vote of those voting on the EC (rather than 2/3 of the EC) given that recusals could reduce the size of the EC for this function.

SPC-10

Motion by the SPC to add new 8h subsection to the Code of Conduct as follows:

Add a new 8h subsection noting that the results of the Disciplinary Committee's investigation will be confidential (except for the discipline imposed), unless the person chooses to appeal, and then the results will only revealed to said appellate body(s).

F. Tabulation Advisory Committee:

TAB-01

Motion by the Tabulation Advisory Committee:

Motion to renumber the existing Rules 3.14 and 3.15 to be rules 3.15 and 3.16, respectively and to create a new rule 3.14 which is listed below.

Motion also includes amending Rule 5.28(4) as indicated below.

3.14 Rosters at the National Championship Tournament.

(a) Manner of and deadline for submission. Team rosters for the National Championship Tournament shall be submitted via email to the AMTA Tabulation Director no later than 12:00 noon central time on the Sunday following the completion of the final opening round championship tournament. If the final opening round championship tournament ends on a Saturday, the deadline is 12:00 noon central time on the second Sunday after the completion of the final opening round championship site.

(b) Penalty for missed deadline. Any team that fails to submit its roster by the deadline shall be limited in composition to the students listed for the same team number during the opening round championship.

(c) Multiple teams. If a school is accepting two bids to the National Championship Tournament, the school shall designate one roster with one team number, as its "A" team and the other roster, with a different team number, as its "B" team. The "A" designation shall be the stronger of the two teams; the "B" designation shall be the weaker of the two teams. The rosters submitted shall be final. Changes to a submitted roster shall be permitted only with the approval of a majority of the members of the Competition Response Committee.

Motion to amend Rule 5.28(4) "Random draw required" to read:

(4) Random draw required, timing. Division draws shall be done at random, taking steps as needed to implement the above rules. The draw shall be conducted as soon as practicable after all rosters have been submitted, or the deadline for submission has passed, pursuant to Rule 3.14.

Motion by Bloch, B., to strike the words "only with the approval of a majority of the members of the Competition Response Committee." in 3.14(c).

Seconded.

Motion to strike fails.

Motion fails.

G. Tournament Administration Committee:

No Motions.

H. Ad Hoc Committees:

AH-01:

Motion by Schuett, N to amend the current rules regarding judge recruitment process as follows:

Replace the current judge recruitment process relying on the tiered system only with a bright-line test favoring persons with a J.D. over non-J.D. judging candidates to bolster the quality of the judging pool at AMTA sanctioned events.

COMMITTEE RECOMMENDATION: NONE; THE COMMITTEE WAS SPLIT 4-3 IN FAVOR OF THE BRIGHT-LINE TEST. THE DISAGREEMENT WAS STARK AND DEEPLY DIVIDED REGARDING THE PURPOSE OF MOCK TRIAL JUDGING AND THE TYPE OF RESULTS AND EDUCATION DESIRED FOR THE STUDENTS AND TOURNAMENT. GIVEN THE POLEMICAL NATURE OF THE CHANGE IN JUDGE RECRUITING WE FELT IT WAS SOMETHING BEST ADDRESSED BY THE ENTIRE BOARD.

RATIONALE: The new and current, but poor, hosts need more guidance on what constitutes “quality judges” in order to comply with RECOMMENDATION 1. To avoid the appearance of impropriety when using mock trial alumni a bright-line test should be utilized by the host. A bright-line test would require the following: if a host has the option of filling a judging slot with a licensed attorney and a non-JD holding former mocker, even national champion, the host is required to select the attorney. The reasoning being that the state licensing board for the host's area has deemed the attorney competent to practice law and therefore qualified to give legal opinions. Whereas the former mocker, even for all of her former glory, only has mock trial knowledge and it is usually limited to a particular regional or school's style/preferences. A former mocker carries more inherent biases than the attorney.

The opposition to the bright-line test argues former mockers are inherently better judges because they know the ins-and-outs of mock trial. They are less likely to err in their scoring of the ballot and they understand the constraints/schism between the "real world" and "mock trials". Therefore, a host should have leeway to decide on a case-by-case basis whether or not a former mocker, non-JD holder, should be selected to the judging pool over an unknown attorney. The opposition to the bright-line test seemed in favor of a recommendation to new hosts on the types of judges to recruit, but balk at the idea that a JD is a carte blanche for judging.

Motion fails.

X. Unfinished/New Business

XI. Adjournment