



# American Mock Trial Association

2012 Board Meeting Minutes  
Hosted by Baylor Law School  
Waco, Texas  
Organized by Heather Creed  
July 20-22, 2012

## I. Call to Order (start time: 1:03 p.m., CDT)

### A. Saturday afternoon attendance:

*Members present (20): Bernstein, Calkins, Creed, Detsky, Eslick, Guliuzza, Halva-Neubauer, Haughey, Heytens, Langford, Leckrone, Nelmark, Palmer, Racheter, Scott, Seelau, Vile, Woodward, Walsh, Zeigler*

*Members not present (7): Butler, Hawley, Kelly, Neuhaus, Satler, Schuett, Smith, Wagoner*

*Candidate Members present (7): Thomason, Warihay, Keener, Weatherby, Leapheart, Parker, Pavely*

*Candidate Members not present (0): None*

*Staff & Guests (5): Dorman, Ewing, Colwell, Peterson, Jurchisin*

### B. Sunday morning attendance:

*Members present (20): Bernstein, Calkins, Creed, Detsky, Eslick, Guliuzza, Halva-Neubauer, Haughey, Heytens, Langford, Leckrone, Nelmark, Palmer, Racheter, Scott, Seelau, Vile, Woodward, Walsh, Zeigler*

*Members not present (7): Butler, Hawley, Kelly, Neuhaus, Satler, Schuett, Smith, Wagoner*

*Candidate Members present (7): Thomason, Warihay, Keener, Weatherby, Leapheart, Parker, Pavely*

*Candidate Members not present (0): None*

*Staff & Guests (5): Dorman, Ewing, Colwell, Peterson, Jurchisin*

*Directors Emeritus (0):*

## II. Welcome and Remarks

Delivered by incoming President, Halva-Neubauer, G.

## III. Introductions – Members and Guests

## IV. Format of Agenda

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 initials of the AMTA Committee to which the motion was referred (e.g. EC-02 or TAB-03). The numeric order is based upon the order in which the motions were submitted, subject to the exception that every effort was made to place motions addressing the same issue in sequential order regardless of submission date. The Committees had the option of tabling the motion, amending the motion or substituting the motion. 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 bold.** The decision of the respective committees follows each motion **IN BOLD, CAPITAL LETTERS AND UNDERLINED.** Motions that have been recommended by committee do not need to be seconded at the meeting.

Motions to untable, amend, modify or substitute a motion are included below in red. **The final disposition of the motion is in bold red. Secretary's notations appear in bold blue.**

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)

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

Annexed 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.

Annexed to the Agenda as **Appendix C** are the minutes from the November, 2011 mid-year conference call/board meeting.

Annexed to the Agenda as **Appendix D** is the restyled Midlands Rules of Evidence referred to in motion RSC-07.

Separately annexed to the Agenda as **Appendix E** is the restyled Midlands Rules of Evidence (“MRE”) referred to in motion RSC-07 with redlining to indicate where the new version departs from the current MRE.

## **V. Approval of Agenda**

**Motion by Detsky, A, (as outgoing Secretary) to approve agenda.**

**Motion by Detsky, A. to amend the agenda so that elections B, C and D occur on Sunday morning, to follow Guliuzza, F. motion, seconded by Racheter, D. Motion carries.**

**Motion by Detsky,A. to approve agenda as amended, seconded by Woodward, J. Motion carries.**

## **VI. Special Board Elections**

### **A. Election of President-Elect:**

**Motion by Guliuzza, F. to nominate Bernstein, J. for President-Elect.**

**Motion by Palmer, J. to nominate Palmer, J. for President-Elect.**

**Motion by Scott, J. to enter Executive Session, seconded by Woodward, J. Motion carries.**

**Motion by Racheter, D. to vote by secret ballot, seconded by Woodward, J. Motion carries.**

**Motion by Woodward, J. to return to open session, seconded by Scott, J. Motion carries.**

**The new President-Elect is Bernstein, J.**

### **B. Election of At-Large Board Member for Human Resources Committee:**

**Motion by Haughey, D. to nominate Heytens, T.**

**Motion by Vile, J. to nominate Racheter, D.**

**Motion by Woodward, J. to vote by secret ballot, seconded by Seelau, R. Motion carries.**

**The at-large member of the HR Committee is Heytens, T.**

**C. Election of At-Large Member to Disciplinary Committee:**

**Motion by Haughey, D. to nominate Scott, J.**

**Motion by Woodward, J. to nominate Woodward, J.**

**Motion by Langford, B. to vote by secret ballot, seconded by Seelau, R. Motion carries.**

**The at-large member of the Disciplinary Committee is Woodward, J.\***

**D. Election of back-up At-Large Member to Disciplinary Committee:**

**Motion by Racheter, D. to nominate Scott, J.**

**Motion by Langford to accept by acclamation. Motion carries.**

**The backup member of the Disciplinary Committee is Scott, J.**

**\*Secretary's Note: Subsequent to the meeting, the Secretary determined that Woodward, J., as a member of the Executive Committee, is ineligible to serve on the Disciplinary Committee under Section 8.04(c) of the AMTA Bylaws. Scott, J. thus became the at-large member. Per Section 4.08 of the AMTA Bylaws, an ad hoc election was conducted and Hawley, A. was elected to serve as the back-up member.**

## **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. (ie. EC-05 would be discussed after EC-04).

**No motions were moved off the table.**

## **VIII. Approval of Mid-Year Minutes (attached as Appendix C)**

**Motion by Detsky, A. (as outgoing Secretary) to approve the Mid-Year Meeting minutes, seconded by Racheter, D. Motion carries.**

## **IX. Approval of Consent Calendar (attached as Appendix A)**

**Motion by Woodward, J. to approve the consent calendar, seconded by Vile, J.  
Motion carries.**

**X. Committee Reports** (*Outgoing Chair/Incoming Chair*)

A. Budget Committee Report (Eslick, M.):

**Motion by Eslick, M. (as Treasurer) to adopt 2012-2013 fiscal year budget,  
seconded by Creed, H.**

**Report distributed to all directors, who asked questions of the Treasurer and  
discussed the organization's fiscal condition at length.**

**Motion carries.**

B. Civil Case Committee (Heytens, T.)

C. Criminal Case Committee (Butler, J.; Parker, T.). **Report delivered by Parker, T.**

D. Competition Response Committee (Guliuza, F.).

E. Development Committee (Palmer, J.).

F. Ad Hoc Committee on Religious Accommodation (Freixes, G./ Koblasz, M.). **Report  
delivered by Woodward, J.**

G. Rules Committee (Bernstein, J./ Seelau, R.).

H. Strategic Planning Committee (Vile, J./ Halva-Neubauer, G.). **Report delivered by Vile,  
J.**

I. Tabulation Advisory Committee (Lyons, K./ Woodward, J.). **Report delivered by  
Woodward, J.**

J. Tournament Administration Committee (Woodward, J./Warihay, W.). **Report delivered  
by Woodward, J.** Championship Subcommittee Report (Guliuza, F).

**Motion by Guliuza, F. to accept recommendation that UCF host the 2014 National  
Championship, seconded by Scott, J. Motion carries.**

K. Other Committee Reports:

Motion by Racheter, D. to stand in recess for 10 minutes, seconded by Detsky, A. **Motion carries.**

The Board reconvened at 2:46pm CDT.

## **XI. Motions:**

### **A. Budget Committee (3):**

#### **BUD-01**

**Motion by Detsky, A. (as amended by Committee) to amend rule 2.5 (regarding refunds), and to add “commentary” following the rule as follows (new language in bold italics):**

#### **Rule 2.5 Refunds and credits.**

**(1) WITHDRAWAL FROM REGIONAL COMPETITION.** A school that withdraws one or more teams from regional competition after October 15 shall not receive any credit or refund *of their registration fees or their regional registration fees. A school may petition the Executive Committee for a refund or partial refund of AMTA tournament fees upon a showing of good cause shown for the withdrawal. Whether a program has shown “good cause” shall be in the discretion of the Executive Committee. Said Petition must be made within 10 days of the conflict arising or shall be deemed untimely and automatically denied.*

#### **Proposed Commentary to appear in the rulebook:**

*The “good cause” exception is not intended to circumvent penalties under rule 2.6 (for untimely dropping). Rather, this exception is intended to allow refunds where circumstances arise that are beyond a program’s control that would make it fundamentally unreasonable to not be refunded. LSAT cannot be considered good cause.*

*Rationale: Our rules currently provide explicitly that there are **no** exceptions to the no refund policy. There needs to be a distinguishment in case the unthinkable occurs.*

#### **COMMITTEE RECOMMENDS ADOPTION**

**Motion by Woodward, J. to amend the text to delete “ their registration fees or...” Accepted by Detsky, A. as friendly amendment.**

**Motion by Heytens, T. to amend the motion to replace the phrase “showing good cause for the withdrawal” with “ showing extraordinary circumstances for the withdrawal.” “Shown good cause” will be amended to “shown extraordinary circumstances.” Accepted by Detsky, A. as friendly amendment.**

**Motion by Heytens, T. to strike the commentary. Accepted by Detsky, A. as friendly amendment.**

#### **Amended language reads:**

#### **Rule 2.5 Refunds and credits.**

**(1) WITHDRAWAL FROM REGIONAL COMPETITION.** A school that withdraws one or more teams from regional competition after October 15 shall not receive any credit or

refund *of their regional registration fees*. A school may petition the Executive Committee for a refund or partial refund of AMTA tournament fees *upon showing extraordinary circumstances* for the withdrawal. Whether a program has shown *“extraordinary circumstances”* shall be in the discretion of the Executive Committee. Said Petition must be made within 10 days of the conflict arising or shall be deemed untimely and automatically denied.

**Motion as amended fails.**

**BUD-02**

**Motion by Detsky, A. to set aside \$2,500 in the 2012-2013 budget for a test-run of a potential online store.**

*Rationale: If there is potential for a new revenue stream outside of fee increases, it is worth a try given the soon-to-be online payment program. This contemplates a test run of 2 or 3 products such as sweatshirts or coffee mugs.*

**COMMITTEE RECOMMENDS ADOPTION**

**Motion carries.**

**BUD-03**

**Motion by Halva-Neubauer, G. (as amended by Committee), to increase the school registration fee from \$350 to \$450 (As this is a motion affecting fees, the rule would not go into effect until the 2013-2014 season).**

**COMMITTEE RECOMMENDS ADOPTION**

**Halva-Neubauer, G. yields the chair to Bernstein, J. Significant discussion of long-term organizational and member needs, as well as the anticipated RFP for strategic planning, ensued.**

**Motion carries.**

**Halva-Neubauer, G. resumes the chair.**

- B. Case Committees (0).**
- C. Competition Response Committee (0).**
- D. Development Committee (0).**
- E. Executive Committee (14):**

## EC-02

Motion by Detsky, A. (as amended by Committee) to amend rule 2.6(3) (regarding late drop penalty structure) as follows (new additions in *italics*, removed language with strike-through):

(3) APPEAL OF LATE DROP PENALTY. The Executive Committee may consider appeals of penalty assessments and may waive *or reduce* fines ~~if the reasons for failing to comply with this Rule are compelling~~ *if it determines that good cause is shown as to the school's failure to timely communicate withdrawal of its team(s) and/or that sufficient steps have been taken by the school to prevent the actions that resulted in the fine being incurred from re-occurring. Good cause is a determination to be made in the discretion of the Executive Committee.*

*Rationale:* The current rule has little flexibility. More importantly, programs collapse for a reason. We need to be helping them, not punishing them.

## COMMITTEE RECOMMENDS ADOPTION

Motion by Woodward, J. to amend each instance of “good cause is” to “extraordinary circumstances are,” seconded by Racheter, D.

Amendment carries.

Amended language reads:

(3) APPEAL OF LATE DROP PENALTY. The Executive Committee may consider appeals of penalty assessments and may waive *or reduce* fines ~~if the reasons for failing to comply with this Rule are compelling~~ *if it determines that extraordinary circumstances are shown as to the school's failure to timely communicate withdrawal of its team(s) and/or that sufficient steps have been taken by the school to prevent the actions that resulted in the fine being incurred from re-occurring. Extraordinary circumstances are a determination to be made at the discretion of the Executive Committee.*

Motion as amended carries.

## EC-04

Motion by Detsky, A. (as amended by Committee) to amend rule 2.11(4) (regarding case access to teams with outstanding fines) by adding the following language (added language in *italics*):

(4) ACCESS CONTINGENT ON PAYMENT. No school shall receive access to the case materials until its payment for registration has been received by the AMTA office and until the school has paid any outstanding penalties or fines. *In the event of outstanding fines, the Executive Committee may authorize case access for schools that otherwise would have timely completed the registration process but/for the payment of the fine where the Executive Committee approves, in writing, an agreement with the fined school to pay the fine over a mutually agreed period of time. Pursuant to rule 3.2, in no event may a school be allowed to compete in an AMTA- sanctioned event if the school has any fines which*

*have not been paid in full by January 15th of that competition year. In no event shall a school have case access without full payment of that year's registration fee.*

**COMMITTEE RECOMMENDS ADOPTION**

**Motion fails.**

**EC-06**

**Motion by Detsky, A. (as amended by Committee) to amend Bylaws to create new rule 4.17 and renumbering all successive subsections accordingly:  
(As this is a motion to amend Bylaws, a 2/3rds vote is required)**

**4.17. Effect of Abstaining.** In the event that a director abstains from a vote, then the abstention shall count as neither a vote for or against the motion. For the purposes of determining the necessary vote total of “the majority” for vote calculation purposes, the abstention has the effect of reducing the total number of votes by one.

**COMMITTEE RECOMMENDS ADOPTION**

**Motion carries by vote of 13 to 5.**

**EC-10**

**Motion by Woodward, J. to amend Rule 9.5(3) (regarding sanctions that may be imposed) as follows (*new language in bold italics*):**

- (3) AVAILABLE SANCTIONS.** Sanctions are limited to:
- (a) probation;
  - (b) written warning or reprimand;***
  - (c) loss of bid eligibility;
  - (d) fines and/or restitution;
  - (e) suspension of a coach or team member;
  - (f) suspension of school membership.

**COMMITTEE RECOMMENDS ADOPTION**

**Motion by Haughey, D. to amend motion to reverse the order of subsections a and b.  
Accepted by Woodward, J. as a friendly amendment. **Motion carries.****

**Amended language reads:**

**(3) AVAILABLE SANCTIONS. Sanctions are 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.***

*(Agenda Note: The following two motions, EC-11 and EC-12, were intended by the author to be submitted, discussed and reviewed together)*

### EC-11

**Motion by Guliuzza, F. to amend the Bylaws to create a “Sanctions Committee” to be charged with deciding whether a rule violation has occurred and what sanction is appropriate.**

*(As this is a motion to create and amend Bylaws, a 2/3rds vote is required)*

### COMMITTEE RECOMMENDS ADOPTION

**Directors and guests engaged in a discussion of recent sanctioning processes and which body was best suited to manage such processes. It was determined that the motion required further consideration and refinement prior to a vote on the merits.**

**Haughey, D. moves to recommit EC-11 and EC-12 back to EC for further review, seconded by Nelmark, D. **Motion carries.****

### EC-12

**Motion by Guliuzza, F. to amend Rule 9.5(1) (regarding sanctioning for conduct) as follows (new language in *bold italics*, removed language in strikethrough):**

*\* - Author’s note when reviewing EC-11 and 12: It would be easier to have an existing committee take on this task, or the motion could and should be read to call for the creation of a new Sanctions Committee to serve this specific function.*

### **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 occurring outside the bounds of a sanctioned tournament. ***Should the Executive Committee find the request for sanctions to be credible, it shall forward the request, and any supporting evidence or materials to the sanctions committee (or an already existing committee)\****

**(4) FACTORS TO CONSIDER.** In determining whether sanctions are appropriate and, if so, which sanctions are appropriate, the ~~Executive Committee~~ **sanctions committee (or an already existing committee)\*** shall consider the severity of the conduct and the severity of the possible sanctions. The ~~Executive Committee~~ **sanctions committee (or an already existing committee)\*** shall endeavor to impose a sanction no more severe than the conduct warrants. The ~~Executive Committee~~ **sanctions committee (or an already existing committee)\*** should also consider the impact any sanction may have on individuals or teams not directly responsible for the conduct, and shall avoid or minimize such impact as appropriate and wherever possible.

**Rule 9.6 Appeal of sanction.** Imposition of a sanction by the ~~Executive Committee~~ **sanctions committee (or an already existing committee)\*** in Rule 9.5 may be appealed to the full Board. The Board’s decision is final.

*Rationale: This change would protect the Executive Committee's role in initiating, even vetting, claims of rules violations. The EC would not, however, select and impose the particular sanction.*

### **COMMITTEE RECOMMENDS ADOPTION**

Haughey, D. moves to recommit EC-11 and EC-12 back to EC for further review, seconded by Nelmark, D. **Motion carries.**

### **EC-13**

**Motion by Guliuzza, F. (as amended by Committee) to create a "Nominating Committee" to be charged with deciding all of the tasks currently delegated to the Executive Committee under Bylaw 4.02 and amending Bylaw 4.02 accordingly. The amended Bylaw would read as follows (new language in *bold italics*, removed language in strikethrough):**

*(As this is a motion to create and amend Bylaws, a 2/3rds vote is required)*

#### **Section 4.02. Selection and Rejection of Candidate Director Applications.**

*(b) Becoming a First-Year Candidate Director.*

*(1) Information Gathering from Candidate Director Applicants.*

~~The Executive Committee~~ ***The Nominating Committee***, which serves as the nominating committee, will require all Candidate Director applications to be turned in no later than March 1. Notice of this deadline will be made public via the AMTA website or other appropriate means by February 1. The President (or his/her designee) will announce names of the individuals who have submitted Candidate Director applications in writing to the entire Board of Directors within two business days following March 1.

*(2) Information Gathering From Directors.*

~~The Executive Committee~~ ***The Nominating Committee*** will accept written recommendations, both positive and negative, from Directors about any Candidate Director applicant for five business days following the written announcement of the candidates.

*(e) Board of Directors Voting on Candidate Directors.*

Any Director applicant who appears on the ballot by ~~the Executive Committee~~ ***the Nominating Committee***, regardless of whether he/she has a positive or negative recommendation from ~~Executive Committee~~ ***The Nominating Committee*** requires a majority of the votes cast by Voting Directors to become a Director. Abstentions do not count as votes in this circumstance.

*(f) Composition of Nominating Committee.*

***The members of the Nominating Committee shall be appointed by the President.***

### **COMMITTEE RECOMMENDS ADOPTION**

**After debate, it was the sense of the body that any committee charged with vetting nominations should have at least one of the elected officers (President-Elect, President, or Past-President) among its members. The body also agreed that the motion required further refinement.**

**Motion by Guliuzza, F. to recommit EC-13 to EC for further discussion, seconded by Vile, J.**

**Motion carries.**

**EC-14**

**Motion by Seelau, R. (as amended by Committee) to amend Section 5.01.01 (regarding Executive Committee duties) of the AMTA Bylaws (new language in *bold italics*), and to create new Bylaws section 5.01.02 (creating a duty to report) as follows:  
(As this is a motion to create and amend Bylaws, a 2/3rds vote is required)**

**Section 5.01.01. Executive Committee Duties.** The Executive Committee is charged:

- to establish and charge such committees as authorized by the Board of Directors and such ad hoc committees as become necessary.
- to appoint people to these committees;
- to monitor the work of those committees throughout the year, making such adjustments to the charge and composition as are needed to facilitate the goals of the committee;
- to compile the agenda for the annual meeting of the Board of Directors;
- to propose the budget to the Board of Directors;
- to establish relationships with internal and external constituencies;
- to handle issues not heretofore specified in the ByLaws;
- to act as the jurisdiction committee when needed to determine which rules apply to a particular situation and to determine which committee is best suited to deal with a particular issue
- *to adhere to the duty to report as laid out in Section 5.01.02 of these Bylaws.*

**Section 5.01.02. Executive Committee's Duties – Duty to Report**

- (a) **Generally.** The Executive Committee has a duty to report to the Board on all issues it has taken votes on, with the exception of votes taken with respect to the Executive Committee's duties as Nominating Committee.
- (b) **Timing.** The Executive Committee shall submit a report at the Mid-Year Meeting and the Annual Board Meeting that details the votes taken by the Executive Committee since the previous report. All such reports must adhere to the guidelines laid out in these Bylaws.
- (c) **Content.** Reports from the Executive Committee on votes should include the following data:
  - The issue being voted on, including any provision or provisions of the Bylaws or any AMTA Rules that are being interpreted.
  - The results of the vote listed numerically (votes in favor, opposed and abstentions in a particular case).
- (d) **Limitations.** This Section does *not* require:
  - Executive Committee reports to include the names of individual Executive Committee members and how each individual votes on a particular matter.
  - Executive Committee reports to be distributed to anyone other than individuals currently serving on the Board of Directors.

- Executive Committee reports to include votes when the Executive Committee has moved itself into executive session.

### **COMMITTEE RECOMMENDS ADOPTION**

**Motion carries unanimously.**

#### **EC-15**

**Motion by Halva-Neubauer, G. to reconsider the decision to host the 2013 Board meeting in Ada, Ohio.**

### **(ADVANCED WITHOUT RECOMMENDATION)**

**Halva-Neubauer, G. yields chair to Bernstein, J.**

Request by Halva-Neubauer, G to withdraw the motion, seconded by Scott, J. **The request requires unanimous consent, which was not achieved.**

**Motion by Halva-Neubauer, G to withdraw the original motion, seconded by Scott, J. Motion by Heytens, T. to vote by secret ballot, seconded by Leckrone, J. Motion for secret ballot fails.**

**Motion to withdraw original motion carries.**

**Halva-Neubauer, G. resumes the chair.**

#### **EC-16**

**Motion by Palmer, J. (as amended by Committee) to amend rule 1.4 (regarding expectations of participants) as follows (new language in bold italics):**

Rule 1.4. Expectations of participants, ***coaches, hosts, and volunteers***; inappropriate behavior. All participants, ***coaches, hosts, and volunteers*** should strive to emulate the finest practitioners in the legal profession. Professional, ethical and collegial behavior is expected at all times. AMTA does not permit or condone any form of discrimination, retaliation, or harassment by any individual or organization affiliated with AMTA based on race, ancestral origin, color, political belief, religion, age, sex, gender, or sexual orientation. Inappropriate behavior includes but is not limited to the following: **(remainder of rule unchanged and omitted from Agenda)**

### **COMMITTEE RECOMMENDS ADOPTION**

**Motion carries.**

#### **EC-16(a)**

*(Agenda note: the original motion by Palmer, J. as EC-16 was replaced by Committee with two substitute motions, resulting in this motion receiving the designation of EC-16(a))*

**Motion by Palmer, J. (as amended by Committee) to create new rules 1.14 , 1.15 and 1.16 (regarding host and volunteer responsibilities) as follows (new language in bold italics):**

1.14 Requirement of Hosts. All hosts of sanctioned tournaments must be approved by AMTA. Hosts may recruit volunteers to assist them with running the event, however the host assumes responsibility for these volunteers subject to the host's written agreement with AMTA.

1.15 Hosting goals. Hosts are reminded that the purpose of mock trial is to instill respect for the legal system and its ideals of justice, equity, and truth. Hosts and their volunteers are expected to promote and champion these ideals above winning, even if you don't have a team competing at the tournament.

1.16 Hosts and volunteers responsibility to AMTA objectives. Every host, including every volunteer, has the responsibility to instill in every student, by word and example, the highest ideals of the American legal system, including fairness, professional integrity, and respect for judges, officials, other members of the mock trial community.

**COMMITTEE RECOMMENDS ADOPTION**

**Motion carries.**

**EC-17**

**Motion by Palmer, J. to create new Bylaw section 4.02.02 as follows:  
(As this is a motion to amend Bylaws, a 2/3 majority is required)**

**Section 4.02.02. Candidate Director Selection Criteria**

Anyone seeking a position as a Candidate Director must fill out a board applicant questionnaire. That questionnaire will allow the applicant to indicate any qualifications he or she feels are pertinent to the selection. The Executive Committee may also choose to query committee Chairs as to the contributions of an applicant. Applicants will be reviewed on the basis of their:

- demonstrated service, e.g. hosting, AR, committee work
- skills, e.g., finance, law, strategic planning, education, time availability
- unique perspective, e.g., geographic, demographic, school size, public-private school, etc.
- credentials (to help open some doors)
- appropriate personality traits including, but not limited to, integrity and civility

*Rationale: We should use similar criteria as when selecting actual Directors. We need to inform candidates what we are looking for.*

**COMMITTEE RECOMMENDS ADOPTION**

**Motion carries, 16-0.**

### EC-23

**Motion by Palmer, J. to create new Rule 9.7 (regarding publication of appeal results) as follows and renumbering all successive rules:**

Rule 9.7 - After the appeal process is complete in regards to a sanction, if the sanction is upheld, the sanctions will be published publicly on the AMTA website on the Sanctions page, but the name of the school will be kept private.

### COMMITTEE RECOMMENDS ADOPTION

**Motion by Scott, J. to amend rule to state that “the sanction(s) and the name of the school(s) will be published on the AMTA website” and to delete all language following that. Modify all occurrences of the word “sanction” to read “sanction(s),” seconded by Walsh, M.**

**Debate ensued as to whether the deterrent effect of a sanction could be secured without disclosure of the institution sanctioned. There was also discussion as to whether procedures to ensure that the mock trial program’s participation was authorized by the institution were sufficient.**

**Motion to amend fails.**

**Original motion carries.**

### EC-26

**Motion by Detsky, A. (as amended by Committee) that the Rules/Sanctions Committee be charged with creating a clear, specific procedure for investigating potential rules violations that spells out who on the Board is authorized to contact those investigated, what written documentation those under investigation are entitled to receive and when, to what extent the alleged violators may speak on their behalf and the possibility of designating a Board member to act as an advisor to those under investigation and to make recommendations to the Board, via report or motion, before or by the mid-year conference call.**

*Rationale: The past two years have seen the most significant punishments doled out by the AMTA Board. One involved a sanction occurring over the summer and one involved a mid-competition season sanction and appeal. The two different circumstances led to two different procedures. There should be clear-cut procedures for dealing with these situations. Case in point: the appeal discussed at the 2011 summer board meeting involved an open dialogue and the team involved, presumably, could have sent someone to speak on their own behalf if they so chose. The 2012 in-season appeal involved an email discussion. There needs to be a transparent, well-defined process or processes.*

### COMMITTEE RECOMMENDS ADOPTION

**Motion carries.**

**F. Human Resources Committee (0).**

**G. Judges/Judging Committee (4):**

**JDG-01**

**Motion by Heytens, T. (as amended by Committee) to create new rule 5.28 (regarding judging at the national championship), and renumbering all successive rules accordingly, as follows:**

**Rule 5.28 – Number of scoring judges at the national championship tournament.** The host of the national championship tournament shall be authorized, but not required, to recruit sufficient judges so as to permit the use of three scoring judges in every non-final round trial at that tournament.

**(ADVANCED WITHOUT RECOMMENDATION)**

Motion by Seelau, R. to add language that reads “The AMTA Tabulation Director shall make the final decision as to whether three ballots per round will be used. The decision will be made prior to the start of the tournament’s opening ceremony. Should the AMTA Tabulation Director make such a decision, s/he will modify the rules as necessary to adapt to a tournament with three scoring judges per round.” Accepted by Heytens, T. as friendly amendment.

**Amended language reads:**

**Rule 5.28 – Number of scoring judges at the national championship tournament.** The host of the national championship tournament shall be authorized, but not required, to recruit sufficient judges so as to permit the use of three scoring judges in every non-final round trial at that tournament. The AMTA Tabulation Director shall make the final decision as to whether three ballots per round will be used. The decision will be made prior to the start of the tournament’s opening ceremony. Should the AMTA Tabulation Director make such a decision, s/he will modify the rules as necessary to adapt to a tournament with three scoring judges per round.

**Motion as amended carries.**

Motion by Palmer, J. to postpone JDG-02, 03, 04 until Sunday morning, seconded by Vile, J. **Motion carries.**

**JDG-02**

**Motion by Palmer, J. (as amended by Committee) to amend Rule 4.20(1) (regarding assignment of judges) as follows (new language in *bold italics*):**

**Rule 4.20 Assignment of judges.**

**(1) WHO ASSIGNS.** *AMTA Representatives shall make the final decisions regarding the assignment of judging panels. AMTA Representatives shall consult the tournament hosts with regard to the assignment of judges as they have superior information regarding the local judging pool.*

*Rationale: Most hosts know their judging pool and the individual judges the best. If a host does not have their own team/program competing, there should be no conflict of interest.*

### **COMMITTEE RECOMMENDS ADOPTION**

**Motion by Seelau, R. seconded by Langford, B. to offer substitute motion to read: (1) WHO ASSIGNS: AMTA Representatives are ultimately responsible for assigning judges to rounds. AMTA Representatives may designate tournament staff or coaches to assist with the draft panel assignments or may create the panels themselves in consultation with tournament staff who are familiar with the judging pool.**

*Comment: Given the significance of panel assignments in determining tournament outcome, it is essential that AMTA Representatives make informed judging assignments. Therefore, consultation with the tournament staff is strongly encouraged. Maintenance of a strong and cordial relationship with the judging pool is an especially high priority for AMTA.*

**Motion by Detsky to amend substitute motion to replace “may create the panels themselves in consultation with the tournament staff” to “may create the panels themselves. AMTA Representatives are strongly encouraged to consult with the tournament staff”. Delete comment. Accepted by Seelau, R. accepts as friendly amendment.**

**Amended language reads:**

***WHO ASSIGNS: AMTA Representatives are ultimately responsible for assigning judges to rounds. AMTA Representatives may designate tournament staff or coaches to assist with the draft panel assignments or may create the panels themselves. AMTA Representatives are strongly encouraged to consult with the tournament staff.***

**Substitute motion as amended carries.**

### **JDG-03**

**Motion by Palmer, J., to amend rule 4.21 (regarding information for judges) as follows (new language in bold italics):**

**Rule 4.21 Information for judges.** A case summary and a copy of the AMTA rules will be provided to judges of sanctioned tournaments. All handouts to be given to judges at sanctioned tournaments must be approved by the Board or the Executive Committee. Judges may be provided with a password to the AMTA website so that they can access case

materials prior to the tournament *if they ask for it. In addition, judges' instruction summary sheet, a scanned copy of the first page of the white and yellow comment sheets, the MRE, and certain sections of the AMTA Rulebook, specifically Rule 7.1 – 8.18, should also be included with the material judges receive.*

**(ADVANCED WITHOUT RECOMMENDATION)**

**Motion by Seelau, R. to substitute the following for JDG-03 (to replace 4.21 following Executive Committee), seconded by Woodward, J.**

**In advance of the tournament, the tournament host will provide (in hard copy or electronically) access to the PowerPoint presentation, Midlands Rules of Evidence, and the ballot. Upon request, a host may provide the Executive Summary, the case summary, the Rulebook (in whole or in part), and/or access to the case in accordance with case access procedures.**

Motion by Racheter, D. to amend motion to replace “will” with “may,” seconded by Heytens, T.

Motion by Guliuzza, F. to call previous question, accepted by unanimous consent.

**Motion to amend carries.**

**Motion by Woodward, J. to eliminate first sentence of 4.21. Accepted by Seelau, R. as friendly amendment.**

**Substitute motion, as amended, reads:**

**Rule 4.21 Information for judges. All handouts to be given to judges at sanctioned tournaments must be approved by the Board or the Executive Committee. *In advance of the tournament, the tournament host may provide (in hard copy or electronically) access to the PowerPoint presentation, Midlands Rules of Evidence, and the ballot. Upon request, a host may provide the Executive Summary, the case summary, the Rulebook (in whole or in part), and/or access to the case in accordance with case access procedures.***

**Substitute motion as amended carries.**

**JDG-04**

**Motion by Palmer, J., to amend Rule 4.22 (regarding information for judges meeting) as follows:**

**Rule 4.22 Judges' meetings.** The Board will create a standard presentation for judges and make the presentation available on the AMTA web site. Coaches may observe the judges' meeting. ~~A judges' instruction summary sheet will be distributed along with a paper copy of the ballots to judges to review during the judges' orientation session. A copy of the summary sheet should be made available to each team.~~ *Teams and coaches may have access to all material distributed to judges on the AMTA website.*

**(ADVANCED WITHOUT RECOMMENDATION)**

**Motion carries.**

**H. Rules Committee (13):**

**RSC-01**

**Motion by Detsky, A. (as amended by Committee) to create rule 9.9(7) and renumbering the other subsections of 9.9 accordingly regarding procedure for intervention.**

(7) EFFECT ON ALL-LOSS CLOCK. When an intervention request is sought, the AMTA Representatives may (but are not required to) extend the all-loss time for the trial for which the intervention was sought.

**COMMITTEE RECOMMENDS ADOPTION**

Motion by Guliuzza, F. to recommit motion to Rules/Sanctions for further review, seconded by Vile, J. **Motion to recommit fails.**

**Motion by Scott, J. to recess until Sunday, July 22, 2012 at 9am CST. Seconded by Vile, J. Motion carries.**

**The Board of Directors reconvened at 9:01am CDT.**

**Motion by Detsky, A. to call the previous question, approved by unanimous consent. Motion carries.**

**RSC-03**

**Motion by Detsky, A., (on behalf of, and in joinder with Warihay, W.) to add new Rule 7.16 (and re-numbering all successive rules accordingly) at the end of the Witnesses section providing as follows:**

**Formal Certification of Experts Not Required.** Unless otherwise provided in the case materials, formal certification of a witness as an expert in a specific field of expertise is not required nor permitted. Attorneys and witnesses should develop expertise and lay foundation through appropriate questioning based on the case materials provided. Judges may entertain any appropriate objections to expert witness qualifications and opinions under the Midlands Rules of Evidence.

*Rationale: This is an "AMTA common law" rule that needs codification in our rules - both for clarity and for assistance to new programs. We currently give this instruction to our judges in the judge meeting, but this rule does not appear in our rulebook.*

**COMMITTEE RECOMMENDS ADOPTION**

**Motion by Woodward, J. to amend title to read “Formal Certification of Experts Not Permitted.” Accepted by Detsky, A. as friendly amendment.**

**Motion by Langford, B. to amended to place rule in MRE as comment to 702 as well as in the Rulebook. Accepted by Detsky, A. as friendly amendment.**

**Motion by Woodward, J. to add a sentence reading “The Rules Chair is authorized to place the language in the appropriate section of the Rulebook,” seconded by Racheter, D. **Amendment carries.****

**Amended language reads:**

**Formal Certification of Experts Not Permitted. Unless otherwise provided in the case materials, formal certification of a witness as an expert in a specific field of expertise is not required nor permitted. Attorneys and witnesses should develop expertise and lay foundation through appropriate questioning based on the case materials provided. Judges may entertain any appropriate objections to expert witness qualifications and opinions under the Midlands Rules of Evidence.**

**Motion as amended carries.**

#### **RSC-05**

**Motion by Seelau, R. (as amended by Committee), to Replace Rule 3.6 (regarding student eligibility) and create new Rule 3.7 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,
- (b) has not taken and is not enrolled in classes at a law school (other than those cross-listed with an undergraduate program), and
- (c) has not already participated in sanctioned tournaments in five separate years.

**(2) QUALIFIED STUDENT DEFINED.** “Qualified students” include and are limited to the following:

- (a) Current undergraduate.** This includes an individual who
  - i. has not received a Bachelor’s degree or equivalent,
  - ii. is enrolled at a registered school, and
  - iii. is enrolled at least on a part-time basis.
- (b) Early graduate.** This includes an individual who
  - i. was a “current undergraduate” as of October 15 in a given season,
  - ii. has ceased enrollment because she or he completed the coursework necessary for graduation,
  - iii. competes for a school that permits such continued participation, and
  - iv. the student has not matriculated in a graduate or professional school.
- (c) Current undergraduate on medical or financial leave.** This includes an individual who
  - i. produces a letter from an administrator other than the school’s Educator or Attorney

Coach certifying the student has taken a leave for financial or medical reasons and that the school permits the student's participation,

ii. would be a "current undergraduate" but for the financial or medical leave, and

iii. has not already competed as a "current undergraduate on medical or financial leave" at sanctioned tournaments in any previous season.

**(d) Candidate for additional undergraduate degree.** This includes an individual who

i. holds a baccalaureate degree or the equivalent,

ii. is currently enrolled in either (a) another baccalaureate program or (b) a targeted program designed for working and/or non-traditional students, provided that the coursework is at the undergraduate level and permits the student to receive a degree or certification,

iii. has never enrolled in or taken classes at any graduate or professional school, and

iv. competes for a school that permits such participation.

**(e) Combination student.** If prior permission of the Executive Committee is obtained in writing, a team may be composed of students from more than one school.

i. This includes an individual who

1. would otherwise be a qualified student except for the fact that her or his school cannot generate sufficient participation to field a team,

2. obtains prior written approval from the Executive Committee to compete with a registered school, and

3. has not already competed as a "combination student" at sanctioned tournaments in more than one previous season.

ii. In the event that the Executive Committee grants an exception under this rule, that exception becomes void if the school in which that exempted student is actually enrolled registers to compete before the expiration of the registration deadline. If the school registers after the expiration of the deadline, then the exception may remain in effect for that season.

**(3) ENROLLMENT AT MULTIPLE INSTITUTIONS.** If an individual is a qualified student at multiple schools, she or he will be eligible to compete for the school where she or he is enrolled for the most credits or, in the case of equal credits, she or he may compete for either institution. In no event, however, may an individual compete at sanctioned tournaments for more than one school during the same season.

**(4) INTERPRETATION AND ENFORCEMENT OF THIS RULE.** The Executive Committee is empowered to interpret the rules of student eligibility and grant exceptions when, in its judgment, extraordinary circumstances make an exception appropriate. Competitive advantage shall not be considered an extraordinary circumstance.

### **Rule 3.7 Team Composition.**

**(1) GENERAL RULE.** Each team may consist only of eligible students from a single member school.

**(2) EXCEPTION FOR COMBINING SCHOOLS.**

(a) Generally. If prior permission of the Executive Committee is obtained in writing, a team may be composed of students from more than one school. This exception is intended to accommodate new schools that cannot generate sufficient participation to field a team. It is not intended to allow schools to combine teams for competitive purposes. A student may compete for a maximum of two years for a school in which she or he is not enrolled.

(b) Subsequent registration of program. In the event that the Executive Committee

grants an exception under Rule 3.7(2)(b), that exception becomes void if the school in which that exempted student is actually enrolled registers to compete before the expiration of the registration deadline. If the school registers after the expiration of the deadline, then the exception may remain in effect.

*Rationale: Every year there is an increasing number of requests related to student eligibility. While these requests have been handled intelligently by the EC, it is time to clarify our rules so that organizations have a better sense of what they can and cannot do. The rule above codifies certain practices that have been in place, certain policy-changes that have long-been discussed, and make a few key decisions about particularly conflictive areas—most notably with respect to students who are in programs where the line between being an undergraduate and a graduate/law student is blurred.*

### **COMMITTEE RECOMMENDS ADOPTION**

**Motion by Bernstein, J. to eliminate section 2(e) and to correct typo. Accepted by Seelau, R. as friendly amendment.**

**Motion by Racheter, D. to replace language in parenthesis 1(b) to read “other than those for which only undergraduate credit is received,” seconded by Vile, J. **Motion to amend carries.****

**Amended language reads:**

#### **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,

(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.

**(2) QUALIFIED STUDENT DEFINED.** “Qualified students” include and are limited to the following:

**(a) Current undergraduate.** This includes an individual who

i. has not received a Bachelor’s degree or equivalent,

ii. is enrolled at a registered school, and

iii. is enrolled at least on a part-time basis.

**(b) Early graduate.** This includes an individual who

i. was a “current undergraduate” as of October 15 in a given season,

ii. has ceased enrollment because she or he completed the coursework necessary for graduation,

iii. competes for a school that permits such continued participation, and

iv. the student has not matriculated in a graduate or professional school.

**(c) Current undergraduate on medical or financial leave.** This includes an individual who

i. produces a letter from an administrator other than the school’s Educator or Attorney Coach certifying the student has taken a leave for financial or medical reasons and that the school permits the student’s participation,

ii. would be a “current undergraduate” but for the financial or medical leave, and

iii. has not already competed as a “current undergraduate on medical or financial leave” at sanctioned tournaments in any previous season.

**(d) Candidate for additional undergraduate degree.** This includes an individual who

i. holds a baccalaureate degree or the equivalent,

ii. is currently enrolled in either (a) another baccalaureate program or (b) a targeted program designed for working and/or non-traditional students, provided that the coursework is at the undergraduate level and permits the student to receive a degree or certification,

iii. has never enrolled in or taken classes at any graduate or professional school, and

iv. competes for a school that permits such participation.

**(3) ENROLLMENT AT MULTIPLE INSTITUTIONS.** If an individual is a qualified student at multiple schools, she or he will be eligible to compete for the school where she or he is enrolled for the most credits or, in the case of equal credits, she or he may compete for either institution. In no event, however, may an individual compete at sanctioned tournaments for more than one school during the same season.

**(4) INTERPRETATION AND ENFORCEMENT OF THIS RULE.** The Executive Committee is empowered to interpret the rules of student eligibility and grant exceptions when, in its judgment, extraordinary circumstances make an exception appropriate. Competitive advantage shall not be considered an extraordinary circumstance.

### **Rule 3.7 Team Composition.**

**(1) GENERAL RULE.** Each team may consist only of eligible students from a single member school.

**(2) EXCEPTION FOR COMBINING SCHOOLS.**

(a) Generally. If prior permission of the Executive Committee is obtained in writing, a team may be composed of students from more than one school. This exception is intended to accommodate new schools that cannot generate sufficient participation to field a team. It is not intended to allow schools to combine teams for competitive purposes. A student may compete for a maximum of two years for a school in which she or he is not enrolled.

(b) Subsequent registration of program. In the event that the Executive Committee grants an exception under Rule 3.7(2)(b), that exception becomes void if the school in which that exempted student is actually enrolled registers to compete before the expiration of the registration deadline. If the school registers after the expiration of the deadline, then the exception may remain in effect.

**Motion as amended carries.**

### **RSC-06**

**Motion by Kelly, M. and Bernstein, J. to replace the existing rule 4.31(2)(regarding plaintiff/prosecution rebuttal on closing) be replaced with the following new rule::**

4.31 (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 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.

*Rationale: The requirement that students reserve time for rebuttal is unnecessary and removing it would mean one fewer item in the already-packed judges orientation.*

**(ADVANCED WITHOUT RECOMMENDATION)**

Seconded by Heytens, T.

**Motion carries.**

**RSC-07**

**Motion by Bernstein, J. (as amended by Committee), that the Midlands Rules of Evidence be replaced with the version appended to these motions, which was revised in accordance with the recently restyled Federal Rules of Evidence.**

The amended FRE appears at the end of the Agenda as **Appendix D**.  
The amended FRE with redlined revisions appears at the end of the Agenda as **Appendix E**.

*Rationale: For education, realism, and clarity, AMTA’s evidentiary rules should generally mirror the Federal Rules.*

**COMMITTEE RECOMMENDS ADOPTION**

**Motion carries.**

**RSC-08**

**Motion by Bernstein, J. that Rule 3.6(1)(regarding general rules of eligibility) be amended as follows (new language in *bold italics*, removed language in strikethrough):**

(1) GENERAL RULES. Each team shall consist only of undergraduate students currently enrolled at the member school. No student may participate in sanctioned tournaments for more than ~~five~~ **four** academic years.

*Rationale: Student participation should be capped at four years rather than five. Four years allows students sufficient time to gain the benefit of collegiate mock trial; additional eligibility affects competitive balance and may incentivize students to delay graduation or career plans.*

**COMMITTEE RECOMMENDS ADOPTION**

**Motion by Nelmark, D. to amend to grandfather in students who have used eligibility prior to the adoption of this motion. Accepted by Bernstein, J. as friendly.**

Motion by Detsky to amend motion to read “in the ordinary case, no student may participate in sanctioned tournaments for more than four years. A student may participate in sanctioned tournaments for a fifth year if and only if s/he would constitute a qualified student without regard to Rule 3.6.2(b) and is enrolled on a full-time basis during the fifth year,” seconded by Langford, B.

The body engaged in significant discussion as to the standard program length for undergraduates, as well as the need to prevent students from delaying graduation to compete in mock trial.

Motion by Guliuzza, F. to recess for 10 minutes, seconded by Vile, J. **Motion carries.**

Meeting resumes.

Motion by Heytens, T. to amend motion to read:

New rule 3.6. Subsection 3.6(c) to read:

(c) has not already participated in sanctioned tournaments in four separate years or is otherwise eligible under 3.6(3).

**3.6(3) Exception for Fifth Year Eligibility:**

A student may be eligible for a fifth year of eligibility in AMTA sanctioned tournaments if he or she complies with all other requirements in rule 3.6 herein and is enrolled as a full-time undergraduate at the time of the eligibility deadline.

And to renumber all successive subsections, seconded by Racheter, D.

Motion by Racheter, D. to amend by removing the period after “deadline” and insert the words “and maintains full-time enrollment for the entire academic year.” Accepted by Heytens, T. as friendly.

Motion by Guliuzza, F. to call previous question, seconded by Seelau, R. **Motion carries.**

**Motion to amend fails.**

**Motion fails.**

#### **RSC-11**

**Motion by Detsky, A. (on behalf of Warihay, W.) to eliminate Rule 4.32 (The Running-clock Guideline).**

*Rationale: This rule is simply a pointless rule. With the advancement of Rule 4.33 All-loss rule, the running clock guideline no longer has a purpose within our rulebook. Further, the rule itself states that “The running clock guideline does not serve as the basis for any penalty.” As such, what is the point of having such a rule? If teams finish rounds within three hours, we don’t really care how long each side took to present its case-in-chief. The all-loss rule clearly has a purpose to help keep tournaments on-time – this rule does not.*

## **COMMITTEE RECOMMENDS ADOPTION**

### **Motion carries.**

#### **RSC-12**

**Motion by Detsky, A. (on behalf of Warihay, W.) to create new Rule 8.7 (and subsequently adjust current Rule 8.7 to Rule 8.8 and all rule numbering following to reflect addition of a new rule) as follows:**

Rule 8.7. All trials shall proceed in the following manner:

- (1) Pre-trial matters: Within the confines of these Rules and any instructions expressly stated within the case packet, teams are permitted to conduct pre-trial matters, including but not limited to making appearances, introducing case materials for judicial reference, and asking the judge's preference on courtroom etiquette and procedure.
- (2) Opening Statements: Both plaintiff/prosecution and defense opening statements must occur at the beginning of the trial, with the plaintiff-prosecution team going first followed by the defense team. A defense team shall not forego or defer its opening statement until the beginning of its case-in-chief.
- (3) Plaintiff/Prosecution Case-in-Chief: The plaintiff/prosecution team shall conduct each direct examination (and any re-direct examination(s)) of its three witnesses, with the defense team conducting its three cross examinations (and any re-cross examination(s)) of the plaintiff/prosecution witnesses. The plaintiff/prosecution team may present all other evidence as permitted by the case materials. No plaintiff/prosecution witness may be re-called later in the trial. No plaintiff/prosecution witness may be deferred until during or after the defense case-in-chief.
- (4) Break: Within the discretion of the judge and within the confines of Rule 4.33, teams may take a brief recess or break between the plaintiff/prosecution case-in-chief and the defense case-in-chief.
- (5) Defense Case-in-Chief: The defense team shall conduct each direct examination (and any re-direct examination(s)) of its three witnesses, with the plaintiff/prosecution team conducting their three cross examinations (and any re-cross examination(s)) of the defense witnesses. The defense team may present all other evidence as permitted by the case materials. No defense witness may be re-called later in the trial. No defense witness may be called prior to the conclusion of the plaintiff case-in-chief.
- (6) Break: Within the discretion of the judge and within the confines of Rule 4.33, teams may take a brief recess or break between the defense case-in-chief and the closing arguments.
- (7) Closing Arguments: Both plaintiff/prosecution and defense closing arguments must occur at the end of the trial, with the plaintiff-prosecution team going first followed by the defense team. The plaintiff/prosecution team may give a rebuttal if permitted in accordance with Rule 4.31(2).

*Rationale:* Our rules do not specifically provide for a format of our trials anywhere. We simply go off of the ballots and “AMTA common law” with how many of our procedures are done. In order to be explicit and provide guidance to new programs or programs unfamiliar with AMTA, these simple procedures should be spelled out in the rules. Specifically, the provision that a defense opening statement must occur at the beginning of the trial does not appear anywhere in our rules. This new section simply codifies many practices already in place at our tournaments and in our judge’s presentation.

**COMMITTEE RECOMMENDS ADOPTION**

**Motion carries.**

**I. Strategic Planning Committee (3):**

**SPC-01**

**Motion by Halva-Neubauer, G., that the Board should issue a Request for Proposal (RFP) to contract with a professional strategic planning consultant with the intent of preparing a strategic plan for the Association. The Strategic Plan should be completed by the 2013 Board Meeting.**

**COMMITTEE RECOMMENDS ADOPTION**

**Halva-Neubauer, G. yields the chair to Bernstein, J. Discussion of the long-term management needs of the organization, as well as workload issues for volunteers, ensued.**

**Motion carries.**

**Halva-Neubauer, G. resumes the chair.**

**SPC-02**

**Motion by SPC Committee in substitution of a motion by Palmer, J. to create the following new Bylaws (regarding persons covered by the Code of Conduct and disciplinary process) to be extended to cover Directors Emeritus as follows (new language in *bold italics*):**

**(As this is a motion to amend the Bylaws, a 2/3rd majority vote is required)**

All former Directors in good standing with AMTA shall be considered Directors Emeriti. Directors Emeriti shall have no authority to bind or represent AMTA or otherwise act on its behalf except where AMTA has expressly bestowed such authority in writing on a Director Emeritus by name, such as assigning a Director Emeritus to serve as an AMTA tournament representative, which would bestow upon a Director Emeritus the authority delegated by AMTA to tournament representatives. A Director Emeritus receiving such authority must be in good standing with AMTA, as required of all Directors Emeriti. AMTA disclaims any and all authority, including apparent authority, not bestowed upon Directors Emeriti in accordance with the forgoing policy.

## **COMMITTEE RECOMMENDS ADOPTION**

**Motion by Woodward, J. to recommit the motion to SPC with the guidance from the straw poll to craft a motion that establishes specific criteria for selecting Directors Emeriti, seconded by Scott, J. **Motion carries.****

### **J. Tabulation Advisory Committee (1):**

#### **TAB-03**

**Motion by Kelly, M. (as amended by committee) to remove Rule 5.28(1)(b) amend and replace the existing Rule 5.28(1)(a) (regarding distribution of bonus bid ranks between divisions at the National Championship Tournament) by replacing the existing with the following new procedure:**

#### **Rule 5.28 Divisions at the National Championship Tournament.**

**(1) DIVISIONS.** The national championship tournament will be run in two divisions.

**(a) DISTRIBUTION OF BONUS BID RANKS.** Teams will be divided into twelve (12) groups of four teams based on each team's Bonus Bid Ranking. (Group A will consist of the 1st to 4th highest BBR ranking among the qualifying teams, Group B will consist of the 5th to 8th highest BBR ranking among the qualifying teams, etc.) Two teams from each group shall be placed in each division.

*Rationale: The current quasi-random draw to determine National Championship Tournament divisions oftentimes creates heavily imbalanced divisions. To the extent that we wish to balance the divisions (which seems to be the case given the current model's splitting teams up in groups of ten teams based on BBR ranking) we need to do a better job of doing so. This year, the top five teams in the BBR were in the same division. This system takes our current approach, but makes the groups smaller to ensure more balance between divisions, while still maintaining the random component.*

## **COMMITTEE RECOMMENDS ADOPTION**

**Motion carries.**

### **K. Tournament Administration Committee (5):**

#### **TAC-02**

**Motion by Eslick, M. (as amended by Committee) to create new subsection 2.9(4), amend Rule 2.9(5), and to renumber subsequent sections as necessary (regarding regional assignments and failure to follow) as follows (new language in *bold italics*, removed language in strikethrough):**

(4) TEAM DESIGNATIONS. If a school registers only one team for regionals, that team shall be the school's "A" team. If a school registers multiple teams, the additional teams shall be referred to as "B," "C," and so forth. A school's best team shall be its "A" team, the "B" team shall be the school's second best team, and so forth. A school shall determine the rank order of its teams in accord with Rule 2.9(7) and (8).

(5) COMMITTEE ASSIGNMENTS ARE FINAL. The Tournament Administration Committee shall assign each properly registered team to a regional tournament by its letter designation. Each team shall only attend the regional tournament to which it is assigned. Any team attending to compete at a tournament to which it was not assigned shall be presumed to be an attempt to manipulate the competitive balance of the tournament assignments and an egregious violation of these Rules subject to sanction under Chapter 9. If a team attends a regional tournament to which it was not assigned, it shall be ineligible for bids, trophies, individual awards, and all other forms of recognition. The team may compete as a bye-buster team in the discretion of the AMTA Representatives.

*Rationale: This amendment eliminates purported confusion over the manner in which sanctions are administered for violations of Rule 2.9(5).*

### **COMMITTEE RECOMMENDS ADOPTION**

**Motion carries.**

#### **TAC-03**

**Motion by Detsky, A. (as amended by Committee) to create new subsections (7) and (8) to Rule 2.9 (regarding designations of A teams, B teams, etc.)**

(7) FACTORS TO CONSIDER FOR TEAM DESIGNATIONS. When a school designates its teams (e.g. "A", "B", "C", etc.) for regional or championship team assignment purposes, factors the program and AMTA shall consider include but are not limited to the following, which are not necessarily listed in order of importance:

- a. Student leadership on the teams (including the number of internal officers (e.g., team president, number of juniors and seniors, if applicable);
- b. Student experience on the teams (including experience at the opening round championship and/or national championship levels);
- c. Student award winners;
- d. Performance at tournaments and/or scrimmages (including both sanctioned and invitational tournaments).

(8) TEAMS of RELATIVE EQUAL STRENGTH. Under these Rules, each school shall designate its teams in rank order ("A", "B", "C" etc.) for team assignment purposes. In certain circumstances, a school may assert that two or more of its teams are of equal strength, or that the above factors do not adequately address the school's system of team selection and assignment. In such cases, the school's primary contact person shall contact the Tournament Administration Committee ("TAC") Chair **before submitting final regional rosters to AMTA online** to obtain a ruling. *The request must be in writing and shall*

*include all information that the requesting school believes pertinent to allow AMTA to fully evaluate the issue presented and make a ruling.\*\* (Note, if TAC-02 passes, add: The writing should include, but is not limited to, the factors enumerated in rule 2.9).* The TAC chair shall forward the inquiry to the Tournament Assignments sub-committee ("TAS") and TAS shall issue a ruling. Unless the school can show extraordinary circumstances exist, a school's primary contact shall initiate contact with the Tournament Administration Committee Chair at least three weeks prior to the first tournament that the school is assigned to attend.

### **COMMITTEE RECOMMENDS ADOPTION**

**Motion by Nelmark, D. to amend motion to replace “shall” with “may” in section 7. Accepted by Detsky, A. as friendly amendment.**

Amended language reads:

(7) FACTORS TO CONSIDER FOR TEAM DESIGNATIONS. When a school designates its teams (e.g. "A", "B", "C", etc.) for regional or championship team assignment purposes, factors the program and AMTA **may** consider include but are not limited to the following, which are not necessarily listed in order of importance:

- a. Student leadership on the teams (including the number of internal officers (e.g., team president, number of juniors and seniors, if applicable);
- b. Student experience on the teams (including experience at the opening round championship and/or national championship levels);
- c. Student award winners;
- d. Performance at tournaments and/or scrimmages (including both sanctioned and invitational tournaments).

(8) TEAMS of RELATIVE EQUAL STRENGTH. Under these Rules, each school shall designate its teams in rank order ("A", "B", "C" etc.) for team assignment purposes. In certain circumstances, a school may assert that two or more of its teams are of equal strength, or that the above factors do not adequately address the school's system of team selection and assignment. In such cases, the school's primary contact person shall contact the Tournament Administration Committee ("TAC") Chair before submitting final regional rosters to AMTA online to obtain a ruling. *The request must be in writing and shall include all information that the requesting school believes pertinent to allow AMTA to fully evaluate the issue presented and make a ruling.\*\* (Note, if TAC-02 passes, add: The writing should include, but is not limited to, the factors enumerated in rule 2.9).* The TAC chair shall forward the inquiry to the Tournament Assignments sub-committee ("TAS") and TAS shall issue a ruling. Unless the school can show extraordinary circumstances exist, a school's primary contact shall initiate contact with the Tournament Administration Committee Chair at least three weeks prior to the first tournament that the school is assigned to attend.

**Motion carries.**

**TAC-04**

**Motion by Nelmark, D. (as amended by Committee) to amend Rule 5.31(2)(regarding awards for those who compete in the championship round) to read as follows (new language in *bold italics*):**

**(2) ALL-AMERICAN AWARDS BASED ON REACHING FINAL ROUND.** ~~All students participating in the final championship round shall be designated an Interscholastic All-American Witness or Interscholastic All-American Attorney, as appropriate.~~ ***Each student portraying an attorney or witness in the championship round shall be designated an All-American attorney or witness, respectively. Each other student on the roster of either team in the championship round shall also be designated an All-American Attorney or All-American Witness, so long as the student actually scored points as an attorney or witness during any of Rounds 1 through 4 of the national championship tournament.***

*Rationale: The present rule is odd in that it provides an award to those who “participate in the final championship round” but not their teammates who may have participated on the other side of the case.*

**COMMITTEE RECOMMENDS ADOPTION**

**Motion carries.**

**TAC-05**

**Motion by Hawley, A. to create new rule 5.31(3) (regarding individual awards at the national championship) as follows:**

**1) INDIVIDUALS ON THE CHAMPIONSHIP TEAM.** All rostered members of the team that wins the National Championship, in addition to receiving the team trophy, shall also be awarded a National Championship plaque.

*Rationale: Students who are members of the team that wins the national championship should also be able to take some hardware home with them as recognition of their enormous accomplishment. Note that this motion does not attempt to bestow on these individuals the title of "All-American" attorneys or witnesses, just that they get a Championship plaque as individuals, in addition to the team.*

**COMMITTEE RECOMMENDS ADOPTION**

**Motion by Palmer, J. to amend the motion to apply to the runner-up team as well, seconded by Woodward, J.**

**Motion by Scott, J. to call the previous question, seconded by Seelau, R. **Motion to call question carries.****

**Motion to amend carries.**

**Motion by Calkins, R. to change the word “plaque” to “medal,” seconded by Racheter, D.**

Motion by Guliuzza, F. to call the previous question (re amendment), seconded by Scott, J.  
**Motion to call question carries.**

**Motion to amend carries.**

Motion by Woodward, J. to call previous question (motion as amended), seconded by Langford, B. **Motion to call the question carries.**

**Motion as amended fails.**

#### **TAC-07**

Motion by Woodward, J. that the italicized language of Rules 3.2 and 3.3 (which were passed for a one-year basis at the 2011 summer board meeting, regarding “D’ team waitlisting) be extended to apply to the 2012-13 season. The rules presently appear in the rulebook as follows:

**Rule 3.2 Membership qualification.** Any post secondary institution of higher education may apply for AMTA institutional membership. Timely AMTA membership, along with payment of team registration fees under Chapter 2 guarantees that there will be space in a Regional Tournament *for at least three teams from a participating school*, unless the school’s participation has been limited under Rule 9.5. A school shall not be allowed to participate in any sanctioned tournament if the school has any unpaid fines or penalties.

**Rule 3.3 Number of teams eligible for regional competition.** Each school may register an unlimited number of teams for regional tournaments. *However, no more than three teams from a program will be guaranteed a space in a regional tournament. All additional teams from a program will be placed on the waitlist pursuant to rule 2.10.* No more than two teams from any given school may compete at any single regional tournament.

*Note: The italicized portions of Rules 3.2 and 3.3 expire at the conclusion of the 2011-12 season.*

*Rationale: While I anticipate that AMTA will bring a 25th regional tournament on-line for the 12-13 season, space constraints in some areas of the country, most notably the Southeast and the Chicago metro area, may still necessitate initially waitlisting D teams in order to accommodate timely registered A through C teams. Six D teams were initially waitlisted in the 11-12 season, all of whom did eventually receive a regionals assignment. We should have the same flexibility going forward.*

#### **COMMITTEE RECOMMENDS ADOPTION**

**Motion carries.**

## **XI. Unfinished/New Business**

## **XII. 2012 Winter Conference Call and 2013 Annual Board Meeting**

2012 Board Winter Conference Call is scheduled for December 1, 2012, Time: TBD.

Motion by Guliuzza, F. to amend to date December 8, seconded by Walsh, M. **Motion carries.**

2012 Board Winter Conference Call is now scheduled for December 8, 2012, Time: TBD.

2013 Board Meeting shall be held on July 19-21, 2013 in Ada, OH at Ohio Northern University.\*\*

## **XIII. Adjournment**

Wherein the 2012 meeting of the Board of Directors concluded at 12:08 on Sunday, July 22, 2012 at 12:08pm CDT.

## **Appendix A**



### **American Mock Trial Association 2012 Board Meeting Agenda - CONSENT CALENDAR**

#### **A. 2012-2013 Committee Assignments:**

##### **AMTA Officers:**

Glen A. Halva-Neubauer, President

\_\_\_\_\_, President Elect

David Nelmark, Past President

Sara L. Zeigler, Secretary

Josh Leckrone, Assistant Secretary

Matthew Eslick, Treasurer

Mike Walsh, Assistant Treasurer

##### **Directors:**

Johnathan Woodward, AMTA Tabulation Director

Jackie Palmer, Development Director

##### **Executive Committee(also serves as Nominating Committee):**

*(See By-laws for jurisdiction and duties.)*

Glen Halva-Neubauer, (President)

\_\_\_\_\_, (President-Elect)

David Nelmark, (Past President)

Sara Zeigler, (Secretary)

Matthew Eslick (Treasurer)

Jackie Palmer (Development Director)

William Warihay (Tournament Administration Committee Chair)

Johnathan Woodward (AMTA Tabulation Director)

Frank Guliuzza (Competition Response Committee Chair)

Ryan Seelau (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.*

Jo Ann Scott (Chair)

Margarita Koblasz

Frank Guliuzza

Marissa Oxman

Georgie Weatherby

**Audit Committee:**

Alicia Hawley (Chair)

David Cross

Shirley Pepples

**Budget Committee:**

*To prepare and monitor the budget*

Matthew Eslick (Chair)

Sara Zeigler

Glen Halva-Neubauer

Mike Walsh

**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:**

Toby Heytens (Chair)

Justin Bernstein

Dan Haughey

Mike Walsh

Steve Williams (IP Screening)

**Criminal Case Committee:**

Jason Butler (Co-Chair)

Tom Parker (Co-Chair)

Anna Smith

Kyle Thomason  
Melissa Pavely (IP Screening)

**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.*

Frank Guliuzza (Chair)  
AMTA Tabulation Director: Johnathan Woodward  
Chair, Rules Committee: Ryan Seelau  
Chair, Civil Case Committee: Toby Heytens  
Ombudsperson, Barry Langford  
Chair, Tournament Administration Committee: William Warihay  
President: Glen Halva-Neubauer

**Development Committee:**

*To raise money, build external relationships, and increase the number of schools participating*

Jackie Palmer (Chair)  
DeLois Leaphart  
Heather Creed  
Melissa Pavely  
Jim Wagoner  
Taylor Larson

**Ethics Committee (Ad Hoc):**

*To review ethics concerns and report to the Board regarding the feasibility of an ethics code*

Georgie Weatherby (Chair)  
Don Racheter  
Justin Bernstein  
David Cross  
Jen Satler

**Human Resources Committee:**

Sara Zeigler (Secretary)  
\_\_\_\_\_, President-Elect  
\_\_\_\_\_, Member-at-large

**Judging:**

Grant Keener (Chair)  
Jim Wagoner

Jim Houlihan  
Mary Lynn Neuhaus  
Gordon Park  
Jack Howett

**Religious Accommodation (Ad-Hoc):**

Margarita Koblasz (Counsel, Chair, Ex-Officio)  
Frank Guliuzza  
Adam Detsky  
Don Racheter  
David Cross

**Rules/Sanctions Committee:**

*To oversee and develop rules of competition, evidence and procedure*

Ryan Seelau (Chair)  
Jason Butler (Rules of Evidence Focus)  
John Vile  
Johnathan Woodward  
Anna Smith  
Tom Parker

**Strategic Planning:**

Glen Halva-Neubauer (Chair)  
DeLois Leaphart  
Johnny Pryor  
John Vile  
Ryan Seelau

**Tabulation Advisory Committee:**

*To assist the AMTA Tabulation Director in developing and implementing tabulation methods, oversee bid allocation structure*

Johnathan Woodward (Chair)  
Alicia Hawley  
Mike Kelly  
David Nelmark  
Monica Dorman  
Neal Schuett

**Tournament Administration Committee**

William Warihay (Chair)

**Team and Feeder Subcommittee**

Adam Detsky (Chair)  
Johnathan Woodward  
Melissa Pavely  
David Lichtenstein  
Kyle Thomason

**Site Selection and Host Communication Subcommittee**

Josh Leckrone (Chair)  
Grant Keener  
Georgie Weatherby  
Barry Langford  
Heather Creed

**AMTA Representative Assignment Subcommittee**

Sara Zeigler (Chair)  
Matthew Eslick (Treasurer)  
Jo Ann Scott  
David Nelmark  
Jackie Palmer

**Championship Selection and Planning Subcommittee**

Frank Guliuzza (Chair)  
Dan Haughey  
Justin Matarrese  
Jen Satler  
MaryLynn Neuhaus

**Technology Committee:**

William Warihay, Chair  
Neal Schuett  
Mike Walsh  
David Nelmark

**Ombudsman:** Barry Langford

**Historian:** Brad Bloch

**Parliamentarian:** Frank Guliuzza

**Web Master:** William Warihay

**Counsel:** Margarita Koblasz

**B. Motions:**

**CC-01:**

**Motion by Eslick, M. to Amend Rule 2.4(5) (regarding late registration fee) as follows:**

**(5) LATE REGISTRATION FEE PER TEAM.** Each team which registers after October 15 shall pay a nonrefundable late fee of \$25 ~~in addition to any applicable late fees.~~

*Rationale:* There are no other late fees other than the \$25 late registration fee. The deleted language is therefore surplusage.

**CC-02**

**Motion by Palmer, J. to amend Form A (Application to Apply for Board Candidacy) to add a line under Phone Number to read, “For further questions regarding the application process or criteria to become a candidate, please refer to the By Laws Section 4.02 – 4.02.02.**

**CC-03**

**Motion by Palmer, J. to amend Form B (Application to Renew Candidacy) to change the word “Candidacy” to “Renewal”. The title should read as follows: “AMTA BOARD OF DIRECTORS RENEWAL APPLICATION”**

**CC-04**

**Motion by Detsky, A., (on behalf of Warihay, W.) to rename Rule 8.7 from “Format of the trial” to “Jury Trials – Role and Procedures Regarding Jury Members”**

*Rationale: The name of this rule is misleading. This rule does not have anything to do with the format of the trial. Motion CC-06 seeks to add a new “Format of Trial” rule that more appropriately governs this topic.*

**CC-05**

**Motion by Zeigler, S. to amend section 5.02 of the bylaws (regarding composition of committees) as follows (*new wording in bold italics*):**

**(As this is a motion to amend Bylaws, a 2/3rds vote is required)**

**Section 5.02. Composition of Committees.**

(a) No ~~Director~~ ***Person*** may serve as Chair of more than one of the following committees: Rules, Tournament Administration, Criminal Case Committee, or Civil Case Committee.

(b) No ~~Director~~ ***Person*** may serve on more than two of the following committees: Rules, Criminal Case Committee, Civil Case Committee, or Tournament Administration.

*Rationale: The intent of the provision is to ensure diversity of perspective and representation on these key committees. Limiting the restriction to the directors creates the possibility of significant overlapping membership, contrary to the intention of the provision.*

## Appendix B



### American Mock Trial Association 2012 Board Meeting Agenda – TABLED MOTIONS

*The motions contained in this Appendix have been tabled after being evaluated by committee. They will not be considered by the Board at the July 2011 Board Meeting unless the recommendation to table is overturned. To “untable” a motion, five (5) or more members of the Board other than 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. If the Board votes to “untable” a motion, a separate vote will then be necessary on whether to adopt the motion.*

#### A. Executive Committee:

##### **EC-01**

**Motion by Detsky, A. to create new subsection to the end of rule 2.6 (regarding penalties for no-showing regionals/late drops) to read as follows:**

**(4) MAXIMUM PENALTY.** In the event that a program untimely withdraws from competition or fails to appear for a competition, then the maximum fine that may be incurred by any one participating school for untimely withdrawal shall be \$500. If the fines exceed \$500, then the amount penalized shall not exceed \$500. This rule shall not apply to penalties incurred pursuant to Rule 9.5.

*Rationale: in 09-10, we had (at least) two programs fall apart and no-show regionals. Both schools had two teams registered. Accordingly, the fine to the program was to be \$1,000.*

*The inconvenience to AMTA of having two teams drop is not \$1,000 worth. Seldomly do two teams from the same program no-show regionals...so when that happens, it should be taken as a sign of greater issues within their program and we should not be looking to put the proverbial nail in their program's coffin.*

### **EC-03**

**Withdrawn by author.**

### **EC-05**

**Motion by Detsky, A. to revise Rule 2.8(1)(regarding registration deadlines), and create new subsections (2) and (3), and renumbering all successive subsections accordingly, as follows (new language in bold italics):**

#### **Rule 2.8 Regional registration, deadline.**

(1) ***Priority*** Deadline: The priority registration deadline for regional competition is ***4:30pm central time on October 15th or the first business day thereafter if October 15<sup>th</sup> falls on a weekend or holiday.*** ~~Teams registering after October 15 will be assigned to a regional tournament only on a space available basis at the discretion of the Tournament Administration Committee Chair. No team shall be permitted to compete at a regional tournament~~ ***deemed registered for case access*** if its registration is not final and complete ***and received*** by 4:30 p.m. ~~central time on the first business day after January 15~~ ***the above specified time*** absent a waiver from the Executive Committee. "Business day" is defined as a day that the AMTA administrative office is staffed and open for business. "Final and complete" registration ***for purposes of case access*** means that the AMTA office has ***received*** all of the following items ~~in hand~~

- (a) Payment of the current year school and team registration fees;
- (b) Payment of any prior year penalties;
- (c) Payment of any current year late fees or penalties;
- (d) Submission of a valid letter pursuant to Rule 2.3

***In addition, no team will be deemed eligible for regional competition until (a) through (d) above are paid in full and (e) that full payment of regional fees are received by AMTA's office.***

***\*(NOTE: IF EC-04 PASSES, ADD: "subject to the exceptions set forth in rule 2.11(4)")***

(2) ***Waitlist Deadline:*** ***Teams registering after October 15 but before 4:30pm central time on November 15th or the first business days thereafter will be assigned to the waitlist pursuant to rule 2.10 and will be offered a place at a regional tournament only on a space-available basis at the discretion of the Tournament Administration Committee***

*Chair. Teams whose registration is not complete by the November 15<sup>th</sup> will be offered a place in a regional tournament on a first-come-first-serve basis and only after all teams registering before November 15<sup>th</sup> have been placed or otherwise declined an open spot offered to it by the Tournament Chair.*

*(3) Last Chance Deadline: No team shall be permitted to compete at a regional tournament if its registration is not final and complete and received by the AMTA office by 4:30 p.m. central time on January 15, 2011 or the first business day thereafter in the event that date falls on a weekend or holiday absent a waiver from the Executive Committee. These teams will only be assigned to a regional tournament on a space available basis at the discretion of the Tournament Administration Committee Chair.*

*Rationale:* *The proposed new rule comes as a result of fine-tuning our new waitlist procedures. The general concept is that a B team that registers in late October shouldn't find itself being moved down on the waiting list because a school waited until Christmas to send in their registration.*

#### **EC-07**

**Motion by Detsky, A. to amend rule 9.6 (regarding Appeal of Sanctions) as follows (new language in bold italics):**

**Rule 9.6 Appeal of sanction.** Imposition of a sanction by the Executive Committee in Rule 9.5 may be appealed to the full Board. The Board's decision is final. *All appeals of sanctions to the Board shall be determined by roll-call vote, meaning the published results will show how each Director voted on the issue(s).*

*Rationale:* *Transparency.*

#### **EC-09**

**Motion by Hawley, A. to amend rule 5.01 of the Bylaws (regarding appointment of Executive Committee positions) as follows (new language in bold italics, language to be removed in strike through):**

**(As this is a motion to amend Bylaws, a 2/3rds vote is required)**

**Section 5.01. Elected Officers.** The Board of Directors shall elect a President and President-Elect who shall serve two-year, non-successive terms. The Past President will serve as a member of the Executive Committee. ~~The President will appoint a Secretary, a Treasurer, a Tournament Administration Chair, an AMTA Tabulation Chair, a Rules Committee Chair, a Competition Response Committee Chair and a Development Chair. The Board of Directors must ratify the appointments in order for them to take effect. The Board of Directors may refuse to confirm a presidential appointment and request that the President submit other nominees for consideration.~~ *The positions of Secretary, Treasurer, Tournament Administration Chair, Tabulation Director, Rules Committee Chair, Development Director, and Competition Response Committee Chair shall be determined via a nomination (self or other) process and general election by the entire board of*

*directors at the beginning of the Annual Meeting. All directors who wish to be considered for a position must either nominate themselves or be nominated by a member of the board of directors by June 1st of the election year.* The ten individuals holding these positions constitute the Executive Committee. The Executive Administrative Assistant, hired by the Board of Directors, will be an ex officio nonvoting member of the Executive Committee. The President shall vote on Executive Committee matters only when necessary to break a tied vote.

*Rationale: Given the significant tasks and decisions charged to the Executive Committee, it should be a corporate governance best practice to have the members of this decision-making body elected by the entire board, instead of some other process.*

#### **EC-14(B)**

**Motion by Seelau, R., to amend Bylaw section 5.01.02 (which would have just been passed as part of EC-14) (regarding Executive Committee's duty to report) as follows (new language in *bold italics*, replaced language in strikethrough):**  
**(As this is a motion to amend a Bylaws, a 2/3rds vote is required)**

*\*Author's Note: If EC-14 fails, then [Author} will seek to withdraw EC-15.*

#### **Section 5.02.02. Executive Committee's Duties – Duty to Report**

- (e) **Generally.** The Executive Committee has a duty to report to the Board on all issues it has taken votes on, with the exception of votes taken with respect to the Executive Committee's duties as Nominating Committee.
- (f) **Timing.** The Executive Committee shall submit a report at the Mid-Year Meeting and the Annual Board Meeting that details the votes taken by the Executive Committee since the previous report. All such reports must adhere to the guidelines laid out in these Bylaws.
- (g) **Content.** Reports from the Executive Committee on votes should include the following data:
- The issue being voted on, including any provision or provisions of the Bylaws or any AMTA Rules that are being interpreted.
  - ~~The results of the vote listed numerically (votes in favor, opposed and abstentions in a particular case).~~
  - *The results of the vote listing each Executive Committee member's name and the resolution they voted for.*
- (h) **Limitations.** This Section does *not* require:
- ~~Executive Committee reports to include the names of individual Executive Committee members and how each individual votes on a particular matter.~~
  - Executive Committee reports to be distributed to anyone other than individuals currently serving on the Board of Directors.

Rationale: Since I took over as Assistant Secretary, my numbers indicate that there are more than 25 votes conducted by the EC annually – in some years, considerably more. Only a few of these are ever known to the Board and usually that occurs in cases like what happened with the PSU sanctions this year. The following motions seek to improve the Board’s understanding of what the EC does and to improve accountability of the EC to the Board, thereby leading to better motions and policy changes for the problems that year-after-year pile up before an extremely hard-working EC.

Specifically, I have identified five distinct rationales for having a more formal reporting mechanism set-up between the Executive Committee and the Board as a whole, and there are undoubtedly others. My rationales for this motion are as follows:

1. **It protects all Board members.** The Executive Committee is granted all of its power by the Board as a whole. Thus, any decision the EC makes, it is making on behalf of the Board and such decisions are, in fact, binding the Board as a whole to various actions. If a lawsuit were to arise against an EC decision, the whole Board would be included in most circumstances. While the goal of this motions is NOT to micro-manage or second-guess everything the EC does, the goal is to have the Board better informed about what has been done and what the EC is regularly dealing with in order that the Board may take appropriate action to protect itself if such action is deemed necessary.
2. **It improves transparency.** Since the EC gets all of its authority from the Board, it makes sense that the Board should know what the EC is doing. Internal transparency (between the EC and the Board) and external transparency (between the Board and the public) are both essential for ensuring that AMTA retains the appearance of being a fair and just organization.
3. **It allows for better policy-making.** The EC has to do a lot of work each year, and much of that work is related to rule interpretations or other holes that may exist in our policies. By having the EC report more thoroughly on its voting record, the Board will be made better aware of the repeat issues that the EC is having to deal with. This will allow ALL Board members to come up with new ideas on how to resolve the issues that continue to plague us, instead of placing all the burden on the EC to come up with solutions.
4. **It protects the EC.** The EC has no desire to do anything but reflect the will of the Board and this is hard to do when the dialogue between the EC and the Board is minimal. Reporting requirements will help the EC get feedback and will help the Board develop better policies and policy-statements that can help the EC going forward. It will also protect EC members against charges of “going rogue” in the event that something legally detrimental was undertaken by the EC without Board knowledge.
5. **It improves accountability of the EC.** Right now the Board approves the President’s appointments for EC positions. In order to better assess those appointments, it is key to understanding what those EC positions are and are not making decisions on. There are, of course, other factors to consider when deciding to approve an EC, but how effectively one is representing the Board’s views is among them and this will help bring that to light, thereby improving accountability.

**EC-18**

**Withdrawn by Author.**

**EC-19**

**Withdrawn by Author.**

**EC-20**

**Withdrawn by Author.**

**EC-21**

**Motion by Palmer, J. to amend the Rulebook's Table of Contents to reflect all of the other rules and policies under the Introduction list, i.e.: By-Laws, Conflict of Interest and Code of Conduct Policies**

**EC-22**

**Motion by Palmer, J. to create new Rule 1.5 to read as follows:**

**1.5. Professional Conduct.** All participants must abide by the AMTA Model Rules of Professional Conduct (which are currently being created by the academic and ethics committees).

**EC-24**

**Withdrawn by Author.**

**EC-25:**

*(Secretary's note: EC-25 was tabled in light of the motion advanced as SPC-02)*

**Motion by Woodward, J. to bestow Dr. Marcus D. Pohlmann with the title of Director Emeritus.**

**B. Rules and Sanctions Committee:**

**RSC- 02**

**Motion by Hawley, A. to amend Rule 4.9 (regarding captain/captain's meeting) as follows (*new language in bold italics, language to be removed in strike through*):**

**Proposed Rule: Rule 4.9 Necessity of a captain.** Each team must have a captain. The captain shall represent the team at captains' meetings. Coaches may not be present during a captains' meeting. Once a captains' meeting has begun and until it is complete, coaches may not communicate directly or indirectly with their students attending the captains' meeting, ***nor may they be physically present in the captains' meeting.*** ~~However, nothing in this rule~~

~~shall prohibit a coach from attending or observing a captains' meeting, nor shall it limit communication between coaches and students who are not attending the captains' meeting.~~

*Rationale: The current rule allows coaches in the captains' meetings but does not allow them to have any role whatsoever. The result, in my experience repping three qualifying tournaments this year, was that the presence of coaches in the captains' meetings caused participating students to scrutinize the every move of the attending coaches thereby distracting them from the purpose and goals of the captains' meeting. This rule allows the focus to be back on the students.*

#### **RSC-04**

*(Secretary's Note: portions of RSC-04 were incorporated into RSC-05 by Committee. RSC-05 is on the primary agenda)*

**Motion by Bernstein, J. that Rule 3.6(1)(regarding general rules of eligibility) be amended as follows (new language in *bold italics*, removed language in strikethrough):**

- (4) EXCEPTION FOR STUDENTS WORKING ON ADDITIONAL DEGREES. A student who holds a baccalaureate degree, but is currently ~~enrolled in another baccalaureate program~~ ***an undergraduate student***, but only if all of the following are true:
- (a) the student is not enrolled in any graduate or professional school; and
  - (b) the student has not earned any professional or graduate degree; and
  - (c) the student's school permits such participation.

*Rationale: The exception for students working on additional degrees should cover all undergraduates, not just those working toward a baccalaureate degree. If a student is taking undergraduate courses toward a non-traditional degree or certification, has never enrolled in a graduate course, and has not otherwise exhausted her eligibility, that student should be eligible to enjoy the benefits of collegiate mock trial.*

#### **RSC-09**

**Motion by Butler, J. (on behalf of Parker, T.) to modify Rule 8.09 (regarding invention of fact) by creating a new subsection (6) and renumbering all successive sections accordingly, with the new rule to appear as follows:**

8.09 (6) AFFIRMATIVE OBLIGATION TO CORRECT THE RECORD. If a directing attorney is aware, or reasonably should be aware, that the witness's testimony on direct examination constitutes a material invention, that attorney has an affirmative obligation to correct the record, either through further examination of the witness or by directly notifying the judge of the fact and nature of the material invention. Failure to do so constitutes an ethical violation which is to be taken into account by judges when scoring the round. Such failure to correct the record shall also be a factor in considering whether the material invention(s) constitutes egregious invention under Rule 8.09. Nothing in this subsection creates an additional remedy to be cited by opposing counsel at trial; as stated in Rule 8.09(5) above, the only remedy at trial for material invention is impeachment.

### **RSC-10**

**Motion by Palmer, J. to create a new award, to be given out annually at either the NCT award's ceremony, NCT opening ceremony, or at the annual AMTA board meeting, in which the current AMTA board members vote on the "Spirit of AMTA" among one of our own, whether that be an actual board member, Emeritus status member, or a coach. This would be given to the individual, each year, we, as a board, believe best exemplifies the ideals of AMTA and beyond. This would include civility, fair play and justice. This award would be voted on by the current board members each year by March 15, within a month of the NCT or months before the next annual board meeting.**

*Rationale: We honor our student competitors with this award who best exemplifies these characteristics, which are voted on by them. Why not do the same for our own board members to lead an even bigger example for the people/students we serve. Show them that we don't just "preach" the ideals, but we, as members, strive to achieve them ourselves too.*

### **RSC-13**

**Motion by Palmer, J. to amend Rule 1.2 (Definitions) to add a definition for a "Participant" as follows:**

"Participant" means an individual student who is an actual competitor, or a helper with administrative tasks at a tournament, and all coaches of an AMTA affiliated program, whether paid or volunteer.

## **C. Tabulation Committee:**

### **TAB-01**

**Motion by Detsky, A., to change fourth round pairing procedures at regionals-level only as follows (new language in bold italics):**

All those teams that have records 2.5 ballots or more greater than the "First Out Record" are deemed "already in," meaning they are mathematically guaranteed to advance to the next level. These teams are removed and placed into the Secondary Bracket.

~~All those teams that have records of 2.0 or more ballots less than the "First Out Record" are removed and also placed into the Secondary Bracket. Some of these teams may not be eliminated and all are still bid eligible.~~

***All teams with 2.5 total ballots won or more after round three shall be in the primary bracket (except for those subject to the above caveat). In no event shall a team with 2.5 or more ballots after Round 3 be pulled down to the bottom bracket.***

*Rationale: 4.5's matter. This creates an easy, blanket rule: 2.5 wins or more = fighting. We have a chance to completely eradicate teams sneaking in by dropping down to the already in/out bracket and drawing a below-average opponent.*

**TAB-02**

**Motion by Kelly, M. to modify the procedure for determining sides for third-round matchups as follows:**

After the round 3 pairings having been conflict check, the AMTA representative should then flip a coin. If it is "heads," all the odd-numbered matchups will remain as-is, and the even-numbered matchups will be switched. If it is "tails," all the odd-numbered matchups will be switched, and the even numbered matchups will remain as-is. The pairings here would look as follows:

*Rationale: The purpose of this rule change is to avoid the current scenario of all the better-ranked teams in each pairing representing the same side of the case in Rounds 3 and 4 as one another. Currently, the way we pair round three, it looks as follows:*

R1 v. R2  
R3 v. R4  
R5 v. R6  
R7 v. R8

*At this point, we flip a coin to determine whether the left side stays as-is and becomes Plaintiff/Prosecution, or whether we switch and make the left side become Defense.*

*Barring impermissibles, all the odd-ranked teams (R1, R3, R5, etc.) tend to have better records/CS values than their even-ranked opponents (R2, R4, R6, etc.). Thus, if the odd-ranked teams have a better chance (at that point) of finishing placed higher than their even-ranked opponents, it does not really make sense (in terms of balance) to have all the better-ranked teams in each pairing on the same side of the case.*

*This year, in the O'Reilly Division, the odd-ranked teams had 3 more wins than the even-ranked teams. Using this system, the difference would have been 1. In the Toussaint Division, the odd-ranked teams had 2 more wins than the even-ranked teams; they would be even in this system.*

*Not only will this system make each side more balanced as a whole, it also increases the likelihood that the top teams will not be side-constrained going into the final round. This year in the O'Reilly Division, the odd-ranked teams at 3-1 or better went a combined 7-2-1, and were each side-constrained going into the final round. This issue is compounded, in theory, if there is a side bias in the case.*

*Assuming a 24-team field, this is how the pairings would look pre-coin flip for side determination:*

Matchup 1: R1 v. R2  
Matchup 2: R3 v. R4  
Matchup 3: R5 v. R6

Matchup 4: R7 v. R8  
Matchup 5: R9 v. R10  
Matchup 6: R11 v. R12  
Matchup 7: R13 v. R14  
Matchup 8: R15 v. R16  
Matchup 9: R17 v. R18  
Matchup 10: R19 v. R20  
Matchup 11: R21 v. R22  
Matchup 12: R23 v. R24

*You would then flip a coin. If it is "heads," all the odd-numbered matchups will remain as-is, and the even-numbered matchups will be switched. The pairings here would look as follows:*

P v. D

Matchup 1: R1 v. R2  
Matchup 2: R4 v. R3  
Matchup 3: R5 v. R6  
Matchup 4: R8 v. R7

*If it is "tails," all the odd-numbered matchups will be switched, and the even numbered matchups will remain as-is. The pairings here would look as follows:*

P v. D

Matchup 1: R2 v. R1  
Matchup 2: R3 v. R4  
Matchup 3: R6 v. R5  
Matchup 4: R7 v. R8

*The only negatives to this system are: (1) because it adds an additional level of complexity, it is more prone to errors, and (2) it would require more time. However, this is not very complex at all, and with two AMTA Representatives, along with other observers in the tab room, there shouldn't be any mistakes. With respect to the time, it would be a marginal additional time requirement (no more than 1-2 minutes).*

*In the end, if the higher-ranked team in each pairing already has a theoretical advantage to place higher in the tournament than its lower-ranked opponent, why should we put all of these "advantaged" teams on the same side of the bracket, preventing them from hitting in the fourth round?*

**TAB-04**

**Motion by Nelmark, D. to amend rule 6.8 (regarding the number of bids to the National Championship) and all other relevant rules as follows:**

The National Championship shall be a 32-team, Single-Elimination tournament wherein teams would advance towards the final round by winning 2 of 3 ballots in each round.

Author's note: More details to be provided to whichever committee is referred the motion.

*Rationale: Such a format would prevent a team from losing the chance to advance on a tiebreak, including an 8-0 tiebreak which has happened on two prior occasions. It also reduces the impact of "one crazy judge" that in the present format can single-handedly sink a team's championship hopes.*

#### **D. Tournament Administration Committee:**

##### **TAC-01**

**Motion by Bernstein, J. to amend Rule 2.8(2)(regarding the two team per regional site limit) to read (new language in *bold italics*):**

"A member school may register an unlimited number of teams for regional competition. If a school *whose B team ranks better than 150th in the Bonus Bid Rankings* registers more than two teams, no more than two teams may compete at any single regional tournament site."

*Rationale: The two-team cap was designed to prevent a single school from dominating a regional to the point where it created significant pairing impurities (via the same school matchup constraint). But the cap goes too far, forcing many teams that do not significantly disrupt brackets or pairings to travel great distances at unnecessary expense. AMTA should apply the two-team cap only to those programs whose performance consistently and significantly threatens bracket purity.*

##### **TAC-06**

**Motion by Haughey, D. to create the following new policy (effecting and regarding: regional/ORC assignments; same school matchups, and number of teams per program) and amending, eliminating or replacing all relevant rules accordingly:**

All registered teams from one school shall compete at the same Regional and ORCS sites. The teams from one school may compete against each other, as same-school impermissible restrictions are lifted. As there is no longer an "interference" effect, all teams that compete and qualify for the next level of competition (ORCS and/or National Championship) may accept all earned bids. At the National Championship, all teams from one school shall be placed in the same division.

*Rationale: Elimination of the Penn St. scenario, and any other appearance of impropriety that results from any program that attempts to "game" the system. Recognition of the educational and competitive aspects of mock trial are not at odds, but intertwined.*



# Appendix C



## American Mock Trial Association

2011 Mid-Year Board Meeting Minutes

Conference Call

Saturday, November 5, 2011

### I. Call to Order (1:00pm EST)

#### A. Conference call attendance:

*Members present (20):* Bernstein, Justin; Creed, Heather; Cross, David; Detsky, Adam; Guliuzza, Frank; Halva-Neubauer, Glen; Hawley, Alicia; Heytens, Toby; Kelly, Michael; Langford, Barry; Leckrone, Josh; Lyons, Kristofer; Nelmark, David; Neuhaus, MaryLynn; Palmer, Jackie; Pohlmann, Marcus; Satler, Jennifer; Vile, John; Woodward, Jonathan; Zeigler, Sara

*Members not present (10):* Bloch, Brad; Butler, Jason; Calkins, Richard; Eslick, Matthew; Haughey, Dan; Racheter, Don; Schuett, Neal; Scott, JoAnn; Seelau, Ryan; Wagoner, Jim

*Candidate Members present (4):* Smith, Anna; Walsh, Michael; Thomason, Kyle; Warihay, Will

*Candidate Members not present (2):* Stahl, Ricky; Weatherby, Georgie

### II. Welcome and Remarks (Nelmark, D.)

### III. Format of Agenda:

Delivered by Secretary – Detsky, A.

*The agenda for the mid-year conference was set by the Executive Committee pursuant to rule 10.2.1. Motions to amend are in **red**. The final outcome of each motion is in **bold red**.*

### IV. Approval of Agenda

### V. Approval of 2011 Board of Directors Meeting minutes.

**Motion by Detsky, A. to approve 2011 summer board meeting minutes.  
Seconded. Minutes approved.**

## **VII. Committee Reports**

- L. Budget Committee Report (delivered by Nelmark, D.):**
- M. Criminal Case Committee (delivered by Smith, A.):**
- C. Civil Case Committee (delivered by Heytens, T.)**
- D. Development Committee (delivered by Palmer, J):**
- E. Ad Hoc Committee on Religious Accommodation (delivered by Nelmark, D.):**
- F. Rules Committee (delivered by Bernstein, J):**
- G. Strategic Planning Committee (delivered by Vile, J.):**
- H. Tabulation Advisory Committee (delivered by Lyons, K):**
- I. Tournament Administration Committee (delivered by Woodward, J):**
- J. National Tournaments Subcommittee Report (delivered by Guluizza, F.)**

## **IX. Motions:**

### **MYC-01**

**Motion by the Rules & Sanctions Committee. to create a replace existing rule 8.9 (invention of fact) to read as follows:**

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

**(1) CLOSED UNIVERSE.** Mock trial competitors are to advocate as persuasively as possible *based on the facts provided*. Thus, teams must rely on the facts stated in the Case Problem rather than creating new facts or denying existing facts in order to advantage their parties (an “Improper Invention”).

**(2) JUDGES’ SCORING.** If a team demonstrates through impeachment that its opponent has made an Improper Invention, judges should reflect that violation in their scores by penalizing the violating team, rewarding the impeaching team, or both.

**(3) STUDENTS’ HONOR CODE OBLIGATION.** Students should note that while the exclusive trial remedy for violating this rule (impeachment) is explained below, an opponent’s inability to successfully impeach a witness does not necessarily mean the witness has complied with this rule. Teams have an independent “honor code” obligation:

an Improper Invention is cheating regardless of whether an opponent is successful in demonstrating the violation.

**(4) IMPROPER INVENTION.**

**(A) Definition.** There are exactly two types of Improper Invention:

- i. Any instance (on direct, cross, re-direct, or re-cross examination) in which a witness introduces testimony that contradicts her or his affidavit.
- ii. Any instance on direct or re-direct examination in which a witness testifies to material facts not included in her or his affidavit.

**(B) Clarification concerning cross-examination.** On cross-examination, a witness commits no violation or Improper Invention when she or he testifies to material facts not included in her or his affidavit—as long as the witness’s answer is responsive to the question posed. In other words, a witness is allowed to invent material facts on cross-examination as long as the witness remains responsive to the question posed. Attorneys who ask questions to which the witness’s affidavit does not provide an answer risk receiving an unfavorable answer in trial. Notwithstanding the aforementioned rules, however, nothing in this section is intended to prevent attorneys from attempting to challenge a witness’s credibility by demonstrating an omission through use of the witness’s affidavit.

**(C) Ancillary Terms.**

**i. Material facts.** Facts are “material” if they affect the merits of the case. Facts are not “material” if they merely provide background information or develop the character of a witness. 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.

**ii. Reasonable inference.** A witness’s answer does not qualify as a “reasonable inference” merely because it is consistent with (*i.e.*, does not contradict) statements in the witness’s affidavit. Rather, a reasonable inference must be a conclusion that a reasonable person would draw from a particular fact or set of facts contained in the affidavit.

**iii. Affidavit.** For the purposes of Rule 8.9, an “affidavit” includes not only a witness’s sworn statement, but also any document in which the witness has stated her or his beliefs, knowledge, opinions or conclusions (such as a deposition or an expert’s written report). This definition does not include affidavits or documents produced by other witnesses, except to the extent that a witness has relied on such affidavits or documents in forming her or his own conclusions.

**(5) TRIAL REMEDY FOR VIOLATIONS.** If the cross-examiner believes the witness has made an Improper Invention, the only available remedy is to impeach the witness using the witness’s 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.** If a team or AMTA Representative believes that a team has made an *egregious* Improper Invention, it may report that allegation to the AMTA Rules and Sanctions Committee. The AMTA Rules and Sanctions Committee is authorized to investigate the allegations and, upon determination of egregious wrongdoing, may issue sanctions against the violating team. Sanctions may include any sanctions permitted under

this AMTA Rulebook.

Motion by Cross, D. to amend section (3) to replace all references to “honor code” with “Rule 1.4.”

Seconded

Motion amended.

Motion by Heytens, T. to amend by deleting section (6) in its entirety.

Seconded.

Motion to amend fails

Motion by Lyons, K. to replaced the language of section (6) above as follows:

(6) POST-TOURNAMENT REVIEW. If a team or AMTA Representative believes that a team has made an egregious Improper Invention, it may report that allegation to the Executive Committee. The Executive Committee is authorized to investigate the allegations and, upon determination of egregious wrongdoing, may issue sanctions against the violating team. Sanctions may include any sanctions permitted under this AMTA Rulebook.

Motion by Woodward, J. to substitute language in the proposed amendment to section (6) to reflect that the Competition Response Committee would investigate the claim and be charged with making recommendations to the Executive Committee where warranted. The Executive Committee would then be responsible for the sanction.

Seconded.

Language Substituted

Motion by Lyons, K. (as amended) seconded.

Motion amended. Amended.

Motion by Woodward, J. and Vile, J. to create a section (7), requiring any such complaint to made within 48 hours of the alleged egregious invention.

Seconded.

Motion amended.

**Motion as amended seconded.**

**Motion adopted as amended.**

### **MYC-02**

**Motion by the Rules & Sanctions Committee. to remove the existing language of rule 9.9(4) (procedure for requesting intervention) and replace with the following:**

**Rule 9.9 Interventions.**

....

**(4) PROCEDURE FOR REQUESTING INTERVENTION.**

**(A) Intervention Requests Generally Limited to Students.** Any student on the roster of a team competing in a trial may request intervention from the AMTA Representatives. Before requesting the intervention, the team seeking the intervention must first notify a student on the roster of the other team that it is about to seek the intervention. The purpose of this requirement is to give the other team an opportunity to be present when the intervention is first requested.

**(B) When Others May Request Intervention.** People other than the students competing in the trial may seek interventions only where it would be impossible or extraordinarily impractical for those students to seek the intervention. Inconvenience does not suffice for such impossibility or impracticality. Examples of when it would be impossible or extraordinarily impractical for students to seek an intervention include: (i) if a spectator observes during a break when all students have left the courtroom that one judge is physically changing the other judge's scores, the spectator may request an intervention; and (ii) if a coach overhears—outside the presence of any students—judges remarking about the school identity of the teams they are observing (e.g., “The Prosecution team is Midlands University and they are known for cheating. Make sure to score them low.”), the coach may request an intervention.

**(C) Opportunity to be heard.** The AMTA Representatives need not consult with both teams before *denying* an intervention request. However, before intervening in any way or imposing sanctions of any kind, the AMTA Representatives must give both teams an opportunity to be heard. If an AMTA Representative requests that a team meet with the AMTA Representative to discuss the intervention request, and that team refuses the AMTA Representative's request, that team waives the aforementioned opportunity to be heard.

**Motion seconded.**

**Motion adopted.**

**X. Unfinished/New Business**

**XI. Adjournment**

At which time, the meeting concluded at 2:16pm EST.

Reminder: The 2012 Board Meeting shall be held on July 20-22, 2012 in Waco, TX at Baylor Law School.

## Appendix D



# American Mock Trial Association

## 2012 Board Meeting Agenda

Attachment with regard to motion RSC-07:

## PROPOSED AMENDED MIDLANDS RULES OF EVIDENCE

### Article I.

#### Rule 101. Scope; Definitions

**(a) Scope.** These rules apply to proceedings in the courts of the State of Midlands. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101. No bureaucratic organizations whose edicts govern conduct in Midlands are considered to exist unless specified within the case problem.

*Comment:* Midlands is recognized as being in the United States and governed by the U.S. Constitution.

**(b) Definitions.** In these rules

- (1) “civil case” means a civil action or proceeding;
- (2) “criminal case” includes a criminal proceeding;
- (3) “public office” includes a public agency;
- (4) “record” includes a memorandum, report, or data compilation;
- (5) a “rule prescribed by the Midlands Supreme Court” means a rule adopted by the Midlands Supreme Court under statutory authority; and
- (6) a reference to any kind of written material or any other medium includes electronically stored information.

#### Rule 102. Purpose

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

#### Rule 103. Rulings on Evidence

**(a) Preserving a Claim of Error.** A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

- (1) if the ruling admits evidence, a party, on the record:
  - (A) timely objects or moves to strike; and
  - (B) states the specific ground, unless it was apparent from the context; or
- (2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

**(b) Not Needing to Renew an Objection or Offer of Proof.** Once the Court rules definitively on the record – either before or at trial – a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

**(c) Omitted.**

**(d) Preventing the Jury from Hearing Inadmissible Evidence.** To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

**(e) Taking Notice of Plain Error.** A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.

#### **Rule 104. Preliminary Questions**

**(a) In General.** The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

**(b) Relevance That Depends on a Fact.** When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit of the proposed evidence on the condition that the proof be introduced later.

**(c) Omitted.**

**(d) Omitted.**

**(e) Evidence Relevant to Weight and Credibility.** This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

#### **Rule 105. Omitted**

#### **Rule 106. Remainder of or Related Writings or Recorded Statements**

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part – or any other writing or recorded statement – that in fairness ought to be considered at the same time.

*Comment:* This rule of completeness applies only to material provided in the case packet. This rule does not reference any material not provided in the case packet.

## **Article II.**

#### **Rule 201. Judicial Notice of Adjudicative Facts**

**(a) Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

**(b) Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

**(c) Taking Notice.** The court:

(1) *omitted*;

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

**(d) Timing.** The court may take judicial notice at any stage of the proceeding.

**(e) Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

**(f) Instructing the Jury.** In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

### **Article III.**

#### **Rule 301. Presumptions in Civil Actions Generally**

In a civil case, unless a Midlands statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.

#### **Rule 302. Omitted**

### **Article IV.**

#### **Rule 401. Test for Relevant Evidence**

Evidence is relevant if:

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

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

Relevant evidence is admissible unless any of the following provides otherwise:

- the United States Constitution;
- these rules; or
- other rules prescribed in Midlands.

Irrelevant evidence is not admissible.

*Comment:* Relevant evidence is limited to the information supplied by or reasonably inferred from the case materials supplied by AMTA. For further explanation see Rule 8.9 of the AMTA Rulebook.

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

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

#### **Rule 404. Character Evidence; Crimes or Other Acts**

##### **(a) Character Evidence.**

(1) **Prohibited Uses.** Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

(2) **Exceptions for a Defendant or Victim in a Criminal Case.** The following exceptions apply in a criminal case:

(A) A defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it. In lieu of rebuttal witness availability, a defendant must first notify the court and opposing counsel in writing at the Captains' Meeting of the intention to offer such evidence. If such notice is given, the form included with these Rules of Evidence should be completed

and presented to the judges with the ballots, and the prosecution may also offer such character evidence during its case-in-chief.

**(B)** A defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:

- (i)** offer evidence to rebut it; and
- (ii)** offer evidence of the defendant's same trait.

In lieu of rebuttal witness availability, a defendant must first notify opposing counsel in writing at the Captains' Meeting of the intention to offer such evidence. If such notice is given, the form included with these Rules of Evidence should be completed and presented to the judges with the ballots, and the prosecution may also offer such character evidence during its case-in-chief.

**(C)** In a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

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

**(b) Crimes, Wrongs, or Other Acts.**

**(1) Prohibited Uses.** Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

**(2) Permitted Uses; Notice in a Criminal Case.** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. The prosecution in a criminal case shall provide written notice of such intent prior to witness selection in the Captains' Meeting.

**Rule 405. Methods of Proving Character**

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

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

**Rule 406. Habit; Routine Practice**

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

**Rule 407. Subsequent Remedial Measures**

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

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

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

**Rule 408. Compromise Offers and Negotiations**

**(a) Prohibited Uses.** Evidence of the following is not admissible – on behalf of any party – either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

- (1) furnishing, promising, or offering – or accepting, promising to accept, or offering to accept – a valuable consideration in compromising or attempting to compromise the claim; and
- (2) conduct or a statement made during compromise negotiations about the claim – except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

**(b) Exceptions.** The court may admit this evidence for another purpose, such as proving a witness’s bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

**Rule 409. Offers to Pay Medical and Similar Expenses**

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

**Rule 410. Pleas, Plea Discussions, and Related Statements**

**(a) Prohibited Uses.** In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

- (1) a guilty plea that was later withdrawn;
- (2) a nolo contendere plea;
- (3) *omitted*; or
- (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

**(b) Exceptions.** The court may admit a statement described in Rule 401(a)(3) or (4):

- (1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or
- (2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record and with counsel present.

**Rule 411. Liability Insurance**

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

**Rule 412. *Omitted***

**Rule 413. *Omitted***

**Rule 414. *Omitted***

**Rule 415. *Omitted***

## **Article V.**

### **Rule 501. Privileges in General**

Only privileges granted by a statute of the state of Midlands or by Midlands case law shall be recognized.

### **Rule 502. Omitted**

## **Article VI.**

### **Rule 601. Competency to Testify in General**

Every person is competent to be a witness unless these rules provide otherwise.

### **Rule 602. Need for Personal Knowledge**

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness's own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

### **Rule 603. Oath or Affirmation to Testify Truthfully**

Before testifying, a witness shall be presumed to have been sworn in, by an oath or affirmation to testify truthfully administered in a form designed to impress that duty on the witness's conscience.

### **Rule 604. Omitted**

### **Rule 605. Judge's Competency as a Witness**

The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

### **Rule 606. Omitted**

### **Rule 607. Who May Impeach a Witness**

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

### **Rule 608. A Witness's Character for Truthfulness or Untruthfulness**

**(a) Reputation or Opinion Evidence.** A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

*Comment:* Written notice is required in civil and criminal cases. In lieu of rebuttal witness availability, if the party attacking the character of the witness for truthfulness is the defense and the witness is a plaintiff/prosecution witness, the defense must first notify opposing counsel in writing at the Captains' Meeting of the intention to offer such evidence. If such notice is given, the form included with these Rules of Evidence should be completed and

presented to the judges with the ballots, and the plaintiff/prosecution may offer evidence of truthful character during its case-in-chief.

**(b) Specific Instances of Conduct.** Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

- (1) the witness; or
- (2) another witness whose character the witness being cross-examined has testified about.

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

**(a) In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

- (1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
  - (A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and
  - (B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and
- (2) for any crime regardless of the punishment, the evidence must be admitted if the court can determine that establishing the elements of the crime required proving – or the witness's admitting – a dishonest act or false statement.

**(b) Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

- (1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and
- (2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

**(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:

- (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or
- (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

**(d) Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:

- (1) it is offered in a criminal case;
- (2) the adjudication was of a witness other than the defendant;
- (3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and
- (4) admitting the evidence is necessary to fairly determine guilt or innocence.

**(e) Pendency of an Appeal.** A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

### **Rule 610. Religious Beliefs or Opinions**

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

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

**(a) Omitted.**

**(b) Scope of Cross-Examination.** Cross-examination, other than the initial cross-examination, should not go beyond the subject matter of the direct examination immediately preceding it and matters affecting the witness's credibility. The court may allow inquiry into additional matters as if on direct examination.

**(c) Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily the court should allow leading questions:

**(1)** on cross-examination; and

**(2)** when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

### **Rule 612. Writing Used to Refresh a Witness's Memory**

A witness may use any material provided by AMTA to refresh memory either during or prior to giving testimony.

### **Rule 613. Witness's Prior Statement**

**(a) Showing or Disclosing the Statement During Examination.** When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

**(b) Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

### **Rule 614. Court's Calling or Examining a Witness**

Calling and/or examining of a witness by the court is not allowed.

### **Rule 615. Excluding Witnesses.**

At a party's request, the court must order witnesses constructively excluded so that they cannot hear other witnesses' testimony. But this rule does not authorize constructively excluding:

**(a)** a party who is a natural person;

**(b)** an officer or employee of a party that is not a natural person, after being designated as the party's representative;

**(c)** *omitted*; or

**(d)** a person authorized by a statute provided in the case materials to be present.

*Comment:* This rule does not permit the actual exclusion of students portraying witnesses. Rather, it allows for the constructive exclusion of some witnesses.

## **Article VII.**

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

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

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

#### **Rule 702. Testimony by Expert Witnesses**

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

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

#### **Rule 703. Bases of an Expert's Opinion Testimony**

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

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

**(a) In General – Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue.

**(b) Exception.** In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone

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

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

#### **Rule 706. Omitted**

### **Article VIII.**

#### **Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay**

**(a) Statement.** "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

**(b) Declarant.** "Declarant" means the person who made the statement.

**(c) Hearsay.** "Hearsay" means a statement that:

- (1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.  
**(d) Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:

**(1) A Declarant-Witness's Prior Statement.** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

(A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;

(B) is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

(C) identifies a person as someone the declarant perceived earlier.

**(2) An Opposing Party's Statement.** The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

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

### **Rule 802. The Rule Against Hearsay**

Hearsay is not admissible unless any of the following provides otherwise:

- these rules; or
- other rules prescribed by the Midlands Supreme Court.

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

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

**(1) Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

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

**(3) Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

**(4) Statement Made for Medical Diagnosis or Treatment.** A statement that:

(A) is made for – and is reasonably pertinent to – medical diagnosis or treatment; and

(B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

**(5) Recorded Recollection.** A record that:

(A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;

(B) was made or adopted by the witness when the matter was fresh in the witness's memory; and

(C) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

**(6) Records of a Regularly Conducted Activity.** A record of an act, event, condition, opinion, or diagnosis if:

(A) the record was made at or near the time by – or from information transmitted by – someone with knowledge;

(B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;

(C) making the record was a regular practice of that activity;

(D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and

(E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

**(7) Absence of a Record of Regularly Conducted Activity.** Evidence that a matter is not included in a record described in paragraph (6) if:

(A) the evidence is admitted to prove that the matter did not occur or exist;

(B) a record was regularly kept for a matter of that kind; and

(C) neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

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

(A) it sets out:

(i) the office's activities;

(ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or

(iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and

(B) neither the source of information nor other circumstances indicate lack of trustworthiness.

**(9) Public Records of Vital Statistics.** A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

**(10) Absence of a Public Record.** Testimony – or a certification under Rule 902 – that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

(A) the record or statement does not exist; or

(B) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

**(11) Records of Religious Organizations Concerning Personal or Family History.** A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

**(12) Certificates of Marriage, Baptism, and Similar Ceremonies.** A statement of fact contained in a certificate:

- (A) made by a person who is authorized by a religious organization or by law to perform the act certified;
  - (B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and
  - (C) purporting to have been issued at the time of the act or within a reasonable time after it.
- (13) Family Records.** A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.
- (14) Records of Documents That Affect an Interest in Property.** The record of a document that purports to establish or affect an interest in property if:
- (A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;
  - (B) the record is kept in a public office; and
  - (C) a statute authorizes recording documents of that kind in that office.
- (15) Statements in Documents That Affect an Interest in Property.** A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose – unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.
- (16) Statements in Ancient Documents.** A statement in a document that is at least 20 years and whose authenticity is established.
- (17) Market Reports and Similar Commercial Publications.** Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.
- (18) Statements in Learned Treatises, Periodicals, or Pamphlets.** A statement contained in a treatise, periodical, or pamphlet if:
- (A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
  - (B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.
- If admitted, the statement may be read into evidence but not received as an exhibit.
- Comment:* This rule concerns published treatises, periodicals, or pamphlets that have been provided in the case packet. Mere reference to a title in the packet is insufficient; the entirety of the item must be provided in the case packet for this rule to be applicable.
- (19) Reputation Concerning Personal or Family History.** A reputation among a person's family by blood, adoption, or marriage – or among a person's associates or in the community – concerning the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.
- (20) Reputation Concerning Boundaries or General History.** A reputation in a community – arising before the controversy – concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.
- (21) Reputation Concerning Character.** A reputation among a person's associates or in the community concerning the person's character.
- (22) Judgment of a Previous Conviction.** Evidence of a final judgment of conviction if:
- (A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;
  - (B) the conviction was for a crime punishable by death or by imprisonment for more than a year;
  - (C) the evidence is admitted to prove any fact essential to the judgment; and

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

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

**(23) Judgments Involving Personal, Family, or General History, or a Boundary.** A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) was essential to the judgment; and

(B) could be proved by evidence of reputation.

**(24) Omitted.**

#### **Rule 804. Exceptions to the Rule Against Hearsay –When the Declarant Is Unavailable as a Witness**

**(a) Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted from testifying about the subject matter of the declarant’s statement because the court rules that a privilege applies;

(2) refuses to testify about the subject matter despite a court order to do so;

(3) testifies to not remembering the subject matter;

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) *omitted.*

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

**(b) The Exceptions.** The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

**(1) Former testimony.** Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had – or, in a civil case, whose predecessor in interest had – an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

**(2) Statement Under the Belief of Imminent Death.** In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant’s death to be imminent, made about its cause or circumstances.

**(3) Statement Against Interest.** A statement that:

(A) a reasonable person in the declarant’s position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant’s proprietary or pecuniary interest or had so great a tendency to invalidate the declarant’s claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

**(4) Statement of Personal or Family History.** A statement about:

(A) the declarant’s own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family

history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

**(5) Omitted.**

**(6) Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.** A statement offered against a party that wrongfully caused – or acquiesced in wrongfully causing – the declarant's unavailability as a witness, and did so intending that result.

#### **Rule 805. Hearsay Within Hearsay**

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

#### **Rule 806. Attacking and Supporting the Declarant's Credibility**

When a hearsay statement – or a statement described in Rule 801(d)(2)(C), (D), or (E) – has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

**Rule 807. Omitted**

### **Article IX.**

#### **Rule 901. Authenticating or Identifying Evidence**

**(a) In General.** To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

**(b) Examples.** The following are examples only – not a complete list – of evidence that satisfies the requirement:

**(1) Testimony of a Witness with Knowledge.** Testimony that an item is what it is claimed to be.

**(2) Nonexpert Opinion About Handwriting.** A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.

**(3) Comparison by an Expert Witness or the Trier of Fact.** A comparison with an authenticated specimen by an expert witness or the trier of fact.

**(4) Distinctive Characteristics and the Like.** The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.

**(5) Opinion About a Voice.** An opinion identifying a person's voice – whether heard firsthand or through mechanical or electronic transmission or recording – based on hearing the voice at any time under circumstances that connect it with the alleged speaker.

**(6) Evidence About a Telephone Conversation.** For a telephone conversation, evidence that a call was made to the number assigned at the time to:

(A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or

(B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.

**(7) Evidence About Public Records.** Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

**(8) Evidence About Ancient Documents or Data Compilations.** For a document or data compilation, evidence that it:

(A) is in a condition that creates no suspicion about its authenticity;

(B) was in a place where, if authentic, it would likely be; and

(C) is at least 20 years old when offered.

**(9) Evidence About a Process or System.** Evidence describing a process or system and showing it produces an accurate result.

**(10) Methods Provided by a Statute or Rule.** Any method of authentication or identification allowed by a Midlands statute or a rule prescribed by the Midlands Supreme Court.

### **Rule 902. Evidence That Is Self-Authenticating**

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

**(1) Domestic Public Documents That Are Sealed and Signed.** A document that bears:

(A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

**(2) Domestic Public Documents That Are Not Sealed but Are Signed and Certified.** A document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal – or its equivalent – that the signer has the official capacity and that the signature is genuine.

**(3) Foreign Public Documents.** A document that purports to be signed or attested by a person who is authorized by a foreign country's laws to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester – or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a

reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

- (A) order that it be treated as presumptively authentic without final certification; or
- (B) allow it to be evidenced by an attested summary with or without final certification.

**(4) Certified Copies of Public Records.** A copy of an official record – or a copy of a document that was recorded or filed in a public office as authorized by law – if the copy is certified as correct by:

- (A) the custodian or another person authorized to make the certification; or
- (B) a certificate that complies with Rule 902(1), (2), or (3) or a rule prescribed by the Midlands Supreme Court.

**(5) Official Publications.** A book, pamphlet, or other publication purporting to be issued by a public authority.

**(6) Newspapers and Periodicals.** Printed material purporting to be a newspaper or periodical.

**(7) Trade Inscriptions and the Like.** An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

**(8) Acknowledged Documents.** A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

**(9) Commercial Paper and Related Documents.** Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

**(10) Omitted.**

**(11) Certified Domestic Records of a Regularly Conducted Activity.** The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a rule prescribed by the Midlands Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record – and must make the record and certification available for inspection – so that the party has a fair opportunity to challenge them.

*Comment:* The reasonableness requirement of this rule is satisfied if the aforementioned notice, record, and certification are affirmatively made available at the Captains' Meeting.

**(12) Certified Foreign Records of a Regularly Conducted Activity.** In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification, rather than complying with a Midlands Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

*Comment:* If no foreign law is provided in the case materials, the presumption will be that no legal infraction occurred with respect to the requirement of subdivision 12 that the certification "must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed."

### **Rule 903. Subscribing Witness's Testimony**

A subscribing witness's testimony is not necessary to authenticate a writing.

## **Article X.**

### **Rule 1001. Definitions That Apply to This Article**

In this article:

- (a) A “writing” consists of letters, words, numbers, or their equivalent set down in any form.
- (b) A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.
- (c) A “photograph” means a photographic image or its equivalent stored in any form.
- (d) An “original” of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, “original” means any printout – or other output readable by sight – if it accurately reflects the information. An “original” of a photograph includes the negative or a print from it.
- (e) A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

#### **Rule 1002. Requirement of the Original**

An original writing, recording, or photograph is required in order to prove its content unless these rules or a Midlands statute provide otherwise.

#### **Rule 1003. Admissibility of Duplicates**

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original’s authenticity or the circumstances make it unfair to admit the duplicate.

#### **Rule 1004. Admissibility of Other Evidence of Content**

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

- (a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;
- (b) an original cannot be obtained by any available judicial process;
- (c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or
- (d) the writing, recording, or photograph is not closely related to a controlling issue.

#### **Rule 1005. Copies of Public Records to Prove Content**

The proponent may use a copy to prove the content of an official record – or of a document that was recorded or filed in a public office as authorized by law – if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

#### **Rule 1006. Summaries to Prove Content**

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

#### **Rule 1007. Testimony or Statement of a Party to Prove Content**

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

#### **Rule 1008. Functions of the Court and Jury**

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines – in accordance with Rule 104(b) – any issue about whether:

- (a) an asserted writing, recording, or photograph ever existed;
- (b) another one produced at the trial or hearing is the original; or
- (c) other evidence of content accurately reflects the content.

## **Article XI.**

### **Rule 1101. Applicability of the Rules**

**(a) To Courts and Judges.** These rules apply to proceedings before all courts in the State of Midlands.

**(b) To Cases and Proceedings.** These rules apply in:

- civil cases and proceedings; and
- criminal cases and proceedings.

**(c) Rules on Privilege.** The rules on privilege apply to all stages of a case or proceeding.

**(d) Exceptions.** These rules – except for those on privilege – do not apply to the following:

- (1) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;
- (2) *omitted*; and
- (3) *omitted*.

**(e) *Omitted.***

### **Rule 1102. Amendments**

Amendments to the Midlands Rules of Evidence may be made at the annual AMTA Board Meeting or by special vote convened by the Board.

### **Rule 1103. Title**

These rules shall be cited as the Midlands Rules of Evidence.

This notice must be supplied by the parties to opponents at the beginning of the Captains' Meeting prior to choosing witnesses.

**DISTRICT COURT OF THE STATE OF MIDLANDS**

\_\_\_\_\_)  
vs. \_\_\_\_\_) Case No. \_\_\_\_\_  
\_\_\_\_\_)

**NOTICE OF INTENT TO OFFER CHARACTER EVIDENCE**

COMES NOW the DEFENDANT, in this criminal case, and gives notice of its intention to offer character evidence as follows:

- 1. \_\_\_ the defendant will offer evidence of his/her own character or trait of character [404(a)(1)].
- 2. \_\_\_ the defendant will offer evidence of the victim's character or trait of character [404(a)(2)].
- 3. \_\_\_ the prosecutor will offer evidence of prior crimes, wrongs, or acts [404(b)].

Signed:

\_\_\_\_\_, Attorney for **PROSECUTION / DEFENDANT** (circle one).

**I acknowledge this notice**

\_\_\_\_\_, Attorney for **PROSECUTION / DEFENDANT** (circle one).

**After signing, present to the judging panel with the ballots.**

*NOTE TO JUDGES: A party may offer evidence of a person's character during its case in chief, consistent with the Midlands Rules of Evidence.*