

Nevada Mock Trial Guidelines for Student Attorneys and Witnesses

I. General Suggestions:

- A. Always be courteous to witnesses, other attorneys and the judges.
- B. Rise when addressing the judge.
- C. Direct all remarks to the judge or witness, not to the opposing counsel.
- D. Don't make objections unless you are relatively sure that the judge will agree with you. Judges don't appreciate attorneys who constantly make objections or attorneys who make objections without being able to explain the reason for them.
- E. If the judge rules against you on a point or in the case, take the defeat gracefully and act cordially toward the judge and the opposing team.
- F. Always dress appropriately for the courtroom.

II. Attorneys:

A. Opening Statements

- 1. Objective: To acquaint the judge with the case and to outline what you are going to prove through witness testimony and the admission of evidence.
- 2. Avoid: Too much narrative detail about witness testimony and exaggeration and overstatement of facts that may not be proven. Do not argue the law. Try to avoid reading too much. Defense counsel should not repeat undisputed facts in its opening.
- 3. What should be Included:
 - a. A Short summary of the facts.
 - b. Mention of the burden of proof (the amount of evidence needed to prove a fact) and who has the burden in the case.
 - c. The applicable law.
 - d. A clear and concise overview of the witnesses and physical evidence that you will present and how each will contribute to proving your case.
- 4. Advice in Presenting:
 - a. It is essential that you appear confident in your case.
 - b. Use eye contact when speaking to the judge.
 - c. Use the future tense in describing what you will do (i.e., "The facts will show, " or "Our witnesses' testimony will prove").
 - d. Do not read too much. Look up occasionally at the judge.
 - e. Learn your case thoroughly (facts, laws, burdens, etc.).
 - f. Avoid too much narrative detail about witness testimony. Avoid exaggeration and overstatement of facts that may not be proven.

B. Direct Examination

- 1. Objective: To obtain information from favorable witnesses you call in order to prove the facts of your case, to present your witness to the greatest advantage, to establish your witness's credibility and to present enough evidence to warrant a favorable verdict.
- 2. What Should be Included
 - a. Isolate exactly what information each witness can contribute to proving your case and prepare a series of questions designed to obtain that information.

- b. Be sure that all items you need to prove your case will be presented through your witnesses.
 - c. Use clear and simple questions.
 - d. Never ask a question to which you don't know the answer.
3. Advice in Presenting
- a. Try to keep to the questions that you've practiced with your witnesses and ask a limited number.
 - b. Be relaxed and clear in the presentation of your questions.
 - c. Listen to the answers.
 - d. If you need a moment to think, don't be afraid to ask for a moment to collect your thoughts, or to discuss a point with your co-counsel.
 - e. Be sure to have all documents marked for identification before you refer to them at the trial. Then refer to them as Exhibit 1, or Exhibit A, etc. After you have finished using the exhibit, if it helps your case, ask the judge to admit it as evidence. (See "Rules of Procedure, " presenting evidence, rule 42, for procedures regarding introduction of evidence.)
4. Avoid
- a. Complex and verbose questions. Keep it simple.
 - b. Attempting to elicit conclusions - that's the jury's job.
 - c. Allowing narrative testimony; it could prove dangerous if the witness gets out of your control.
 - d. Leading questions.
5. Other Suggestions
- a. Avoid asking leading questions.
 - b. Practice with your witnesses.
 - c. When you facts are in evidence, cease questioning. Say "No further questions" or "Your witness."
- C. Cross-Examination
1. Objective: To obtain favorable information from witnesses called by the opposing counsel, and if a witness has no testimony favorable to you, to discredit the witness. Try to secure admissions that help your case.
2. Types of Questions to Ask
- a. Questions that reflect on the witness's credibility by showing that he or she has given a contrary statement at another time (i.e., the witness first testifies to not being at the scene of an accident and later admits to being there). When such an inconsistency arises, this may be done by asking the witness, "Did you make this statement on June 1st?" Then read it or show a signed statement to the witness and ask, "Is this your statement?" Then ask the witness to read part of it aloud or read it yourself and ask, "Did you say that?"
 - b. Questions that show that the witness is prejudiced or biased or has a personal interest in the outcome (i.e., the witness testifies that the defendant was her landlord and evicted her).
 - c. Questions that weaken the testimony of the witness by showing that his or her opinion is questionable (i.e., the witness with poor eyesight claims to have observed all the details of a fight that took place 50 feet away in a crowded bar).
 - d. Questions that show that an expert witness or even a lay witness who has testified to an opinion is not competent or qualified due to lack of training or

experience (i.e., a high school student or even a dentist testifying that in her opinion the defendant suffers from a chronic mental disease).

3. Advice in Presenting

- a. Be relaxed and ready to adapt your prepared questions to the actual testimony given during the direct examination.
- b. Always listen to the witness's answer.
- c. Avoid giving the witness an opportunity to re-emphasize the points made against your case during direct examination.
- d. If the witness is in fact "hostile," don't give him or her an opening to explain anything. Keep to the "yes" or "no" answers whenever possible. Try to stop the witness, if his or her answer or explanation is going on and hurting your case, by saying, "You may stop there. Thank you," or "That's enough. Thank you."
- e. Don't harass or attempt to intimidate the witness.
- f. Don't quarrel with the witness.

4. Other Suggestions

- a. Anticipate each witness's testimony and write your questions accordingly, but be ready to adapt your questions at the trial depending on the actual testimony.
 - b. In general, ask only leading questions (questions that suggest the answers and normally only require a "yes" or "no" answer).
 - c. Be brief. Don't ask so many questions that well-made points are lost.
 - d. Prepare short questions using easily understood language.
 - e. Ask only questions to which you already know the answer.
5. Avoid: Hostility toward the witness-juries and judges usually resent it. Don't engage in "fishing expeditions" by giving the witness a chance to clarify damaging statements. When you have a favorable answer, drop the matter and wait for closing argument to emphasize it. Don't ask too many questions, only ask those which really help your case.

6. Impeachment

If testimony is given by a witness on direct examination which you feel contradicts the witness's statement, wait until cross examination, then confront the witness with the statement and bring out inconsistencies in testimony given. NOTE: Witnesses must admit making their statements when directly confronted with the question, "Do you remember making and signing this statement under oath."

D. Objections

1. Purpose: To present to the judge a rule of evidence that would bar an answer to the question asked (or result in striking from the record the answer, if already given). Special objections may also be used to bring a procedural problem to the judge's attention, such as an unfair extrapolation or continuing past time expiration without the judge's permission.

NOTE: If the argument on the application of the rule of evidence would, in itself, result in the jury being made aware of the challenged evidence, counsel should acknowledge for the record that the argument is being made to the Court outside the presence of the jury (although the "jury", who are the scoring judges will remain in the courtroom).

2. Upon an objection being raised, opposing counsel should immediately rise and ask the judge if they may respond to the objection, arguing why it should be

overruled. Because of the educational nature of the program, presiding judges are strongly urged to allow the full objection process to be completed before the ruling.

E. Redirect/Re-cross

Purpose: To rehabilitate a witness or repair damage done by your opponent. Only a few questions, if any, should be asked during re-direct or re-cross.

At the conclusion of Plaintiff's/Prosecution's evidence, Plaintiff/Prosecution should let it be known s/he is through by stating, "The Prosecution rests its case, your Honor."

At the conclusion of the Defense evidence, Defense should let it be known s/he is through by stating, "The Defense rest its case, your Honor."

F. Closing Arguments

1. Objective: To provide a clear and persuasive summary of the evidence you presented to prove your case, along with the weaknesses of the other side's case, and to argue for your position.

2. What Should be Included

a. Thank the judge for his or her time and attention.

b. Isolate the issues and describe briefly how your presentation addressed these issues.

c. Review the witnesses' testimony and physical evidence. Outline the strengths of your side's witnesses and the weaknesses of the other side's witnesses.

d. Argue your case by stating how the law applies to the facts as you have proven them.

e. Remind the judge of the required burden of proof. If you have the burden, you must convince the court that you have met it. If you do not, you must convince the court that the other side has failed to meet its burden.

3. Advice in Presenting

a. Do not read all the way through. Keep eye contact with the judge or at least look up occasionally.

b. Be an advocate - forcefully urge your point of view. Avoid a boring review of the facts.

c. Argue your side, but don't appear blind to the other side's arguments. Fairness is important.

d. Be very careful to adapt your statement at the end of the trial to reflect what the witnesses actually said and what the physical evidence showed.

e. This is where you put all the pieces together for the jury and judge.

f. Use ridicule carefully, for while it can be effective, it is also dangerous. Avoid illogical or confusing arguments. Avoid weak words such as "we believe" or "we think," etc.

III. Witnesses

A. General Suggestions

1. If you are going to testify about records or documents, familiarize yourself with them before coming to trial.

2. When answering questions, speak clearly so that you will be heard.

3. Listen carefully to the questions. Before you answer, make sure you understand what has been asked. If you do not understand, ask that the question be repeated or clarified.

4. If the judge interrupts or an attorney objects to your answer, stop answering immediately. Likewise, if an attorney objects to a question, do not begin your answer until the judge tells you to do so.

B. Direct Examination

1. Advice in Preparing

a. Learn the case thoroughly, especially your witness statement.

b. Review your testimony with your attorney. Know the questions that your attorney will ask you and prepare clear and convincing answers that contain the information the attorney is trying to get you to say.

2. Advice in Presenting

a. Be as relaxed and in control as possible. An appearance of confidence and truthfulness is important.

b. Don't recite your witness statement verbatim. You should know its content beforehand so that you can paraphrase it or put it in your own words, but be sure that your testimony is never inconsistent with, nor a material departure from, the facts set forth in your affidavit. (See "Tournament Rules," Section A. Rules 3 and 4, and 3 below.)

3. Cross-Examination

a. Advice in Preparing

1. Anticipate what you will be asked on cross-examination and prepare answers accordingly. In other words, isolate all the possible weaknesses, inconsistencies or problems in your testimony and be prepared to explain them as best you can.

2. Practice with your attorney, asking him or her to act as opposing counsel.

b. Advice in Presenting

1. Be as relaxed and in control as possible. An appearance of confidence and truthfulness is important. Speak loudly and clearly enough to be heard by the judges.

2. Don't panic if the attorney or judge asks you a question that you haven't rehearsed. Don't be afraid to buy time by saying something like "Excuse me just a moment while I try to remember."

3. Be sure that your testimony is never inconsistent with, nor a material departure from the facts set forth in the witness statement. Minor and inconsequential embellishments are acceptable as long as they can be reasonably inferred from the fact statement. If asked on cross-examination to testify about information that is not part of the case materials, you may invent an answer which is consistent with the other affidavits and facts in the trial. This is in fact an opportunity to create an answer helpful to your side.

Witnesses should keep in mind that such an answer can be disruptive when the other side objects, and may even open the door to the judge issuing an adverse special ruling against you. The wiser course may be to respond in character, but with an innocuous answer, such as "I don't remember" or "I don't believe I can answer that question, would you please rephrase it?" If pressed, you may still prefer to step out of character and say "I don't know. That's not included in the case materials."