



2023-2024

CASE MATERIALS & COMPETITION RULES

Updated 12/21/2023 - RED

State of Minnesota

v.

Smiley Inc

Thank you to the MSBA Case Subcommittee for their countless hours and dedication writing the 2024 Case for the competition: Nicholas Hydukovich (Chair), Marcy Harris (MT Chair), Landon Ascheman, Hon. Lisa Pearson, J. Noble Simpson, Collin Tierney, Graham Wyatt, and Robert Yount.

Thank you to Jennifer Wallace, MSBA, for designing the Smiley Inc logo.

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The Minnesota State Bar Association
600 Nicollet Mall, Suite 380 | Minneapolis, MN 55402
(612) 333-1183 or (800) 882-MSBA

Visit the Mock Trial website at: <http://www.mnbar.org/public/mock-trial>

The MSBA is committed to creating an inclusive environment in which every person can participate in the Mock Trial program. Please contact us if there are reasonable accommodations that would allow you to participate more fully. Such requests should be directed to [Kim Basting](#), Director of Mock Trial Program at (612) 278-6306.

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Consider making a **tax-deductible** donation to the Amicus Society
on behalf of the MSBA Mock Trial Program at GiveMN.org.

Thank you to over the 700 attorney volunteers that spend countless hours preparing teams and judging the competitions! Without your support, the program would not be a success! Visit the 2024 April Bench & Bar publication on our website to see who they are!

*Special thanks to the Mock Trial Advisory Committee.
The Program would not be successful without their knowledge, time, and commitment!*

Marcy Harris, Minnetonka, Chair; Kenneth Alwin, Lake Elmo; Benjamin Anderson, Minneapolis; Landon Ascherman, Saint Paul; Thomas Atmore, Saint Paul; Hon. Annie Claesson-Huseby, Bemidji; Jennifer Clements, Elk River; Honorable James Dehn, Stanchfield; Honorable William Fisher, St. Paul; Robert Huber, Bloomington; Nicholas Hydukovich, Stillwater; Lauren Johnson, Eagan; Scott Jurchisin, Minneapolis; The Honorable William Koch, Minneapolis; William McGinnis, Rochester; Robert Patient, Roseville; The Honorable Lisa Pearson, Saint Paul; The Honorable Jill Prohofskey, Saint Paul; Wynne Reece, Minneapolis; Adam Revoir, Minneapolis; Professor David Schultz, Saint Paul; J. Noble Simpson, Minneapolis; Randy Sparling, Minneapolis; Collin Tierney, Minneapolis; Evan Tsai, Anoka; Aaron Welch, Virginia; Graham Wyatt, Minneapolis; Robert Yount, Anoka.

To: MSBA Mock Trial Program Participants

From: Marcy Harris, Chair, MSBA Mock Trial Advisory Committee

Re: 2023-24 Mock Trial Program

Date: October 23, 2023

On behalf of the Minnesota State Bar Association and the Mock Trial Advisory Committee, welcome to the **39th season** of the High School Mock Trial Program!

We look forward to seeing the arguments you develop.

The MSBA hopes that all the benefits of the Mock Trial Program will go far beyond the rewards associated with competing against one's peers, winning a round or two, or even the state title.

The success of this program relies heavily on the hundreds of volunteers acting as coaches and judges; be sure to extend your gratitude to these individuals whenever given the chance throughout the season!

Water pollution is a major concern – locally, regionally, nationally, and globally. It is increasingly challenging to ensure safe and sufficient water supplies for people and economies. Wastewater is just one facet of water pollution, and the problem is increasing. While industry and agriculture are often big water polluters – industrial wastewater is the subject of this year's Mock Trial case – we have to recognize that over 40% of household wastewater is not treated properly. It behooves us all to assure that wastewater is properly treated and recycled – it's good for the environment, industry, agriculture, and people!

We hope that the teams enjoy developing their respective cases, arguing both sides with and against their peers and learning more about the legal system. Best of luck and have fun!

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CASE OVERVIEW

This is a criminal case brought against a corporation, Smiley Inc. It is based on the alleged illegal discharging of a toxic chemical, Jaundithium, into the Amarillo River. The case is venued in Crow Wing County, where the alleged illegal wastewater discharging took place.

Smiley Inc is a small, closely held printing company owned and operated by the Smiley family. Members of the Smiley family make up the Board of Directors. Previous to Raynie Smiley becoming the Chief Executive Officer (“**CEO**”) of Smiley Inc in November 2022, their parent, Morgan Smiley, was the head of the business.

Smiley Inc had permits to use water from the local body of water, the Amarillo River. It also had a permit for very limited wastewater discharge. Smiley Inc’s levels of wastewater discharge had always fallen below the limits allowed by the permits. In May 2023, after the appearance of discolored fish, complaints and further testing, high levels of Jaundithium were found in the Amarillo River, in close proximity to Smiley Inc, Maxi-Print (another printing company) and the J 7 M Walleye Fish Farm.

Smiley Inc is charged with criminal discharge of wastewater into a Minnesota body of water. Raynie Smiley, as the company’s CFO, is the individual responsible for corporate action, and in this case, is the natural person representing Smiley Inc.

The witnesses for the prosecution are:

- **Nouvel Hakim**: Owner of J & M Walleye Fish Farm. Started noticing fish that came into contact with Amarillo River water was discolored. Filed complaint with the Minnesota Pollution Control Agency (“MPCA”).
- **Morgan Smiley**: Previous CEO Smiley Inc. Smiley and spouse were the previous majority shareholders of Smiley Inc until they divided their shares between **themselves and** their children. Morgan took issue with the way Raynie was running Smiley and filed a whistleblower complaint with MPCA.
- **Peyton Porter**: Minnesota Department of Public Safety Investigator, charged with investigating complaints and testing water in the Amarillo River. The Complainant in the current case.

The witnesses for the defendant are:

- **Dr. Lane Lois**: Expert witness hired by Smiley Inc and Raynie Smiley to conduct tests and give expert testimony regarding Jaundithium pollution in the Amarillo River, near the Smiley Inc site.
- **Raynie Smiley**: President/CEO of Smiley Inc and natural personal representative of Smiley Inc, a corporate defendant. Child of Morgan Smiley.
- **Logan Stirling**: Smiley Inc employee. Previously employed by Maxi-Print, a competitor of Smiley Inc, which is located a few miles from Smiley. Stirling worked primarily in the janitorial and disposal and reclamation areas of both companies.

**STATE OF MINNESOTA
COUNTY OF CROW WING**

**DISTRICT COURT
NINTH JUDICIAL DISTRICT**

State of Minnesota,

Plaintiff,

v.

Smiley Inc,

Defendant.

Case Type: Criminal

Court File No.: 18-CR-23-219

CRIMINAL COMPLAINT

The Complainant, being duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that the Defendant committed the following offense(s):

COUNT I

Charge: Unlawful Disposal of Hazardous Waste

Minnesota Statute: § 609.671, subd. 4

Maximum Sentence: 5 years and/or \$50,000

STATEMENT OF PROBABLE CAUSE

The Complainant states that the following facts establish probable cause:

I, Peyton Porter, am an investigator employed by the Minnesota Department of Public Safety. Based on my investigation regarding a toxic chemical discharged into the waters of Minnesota, there is probable cause to believe that Smiley Inc knowingly disposed of hazardous waste in violation of a material term or condition of a hazardous waste facility permit. This offense occurred between November 2022-May 2023 in Crow Wing County, Minnesota.

Therefore, Complainant requests that Defendant, summoned to court.

COMPLAINANT'S NAME:

Investigator Peyton Porter

COMPLAINANT'S SIGNATURE:

/s/ Peyton Porter

Subscribed and sworn to before the undersigned this 3rd day of July 2023.

Being authorized to prosecute the offenses charged, I approve this complaint.

Date: July 3, 2023

PROSECUTING ATTORNEY'S SIGNATURE:

/s/ Wynne Reece
Name: Wynne Reece
Assistant County Attorney
218-824-1234

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support the issuance of a summons. Defendant is therefore charged with the above-stated offense.

Date: July 3, 2023

Judicial Officer: P. Cahill

The Honorable P. Cahill
Judge of District Court

/s/ P. Cahill
P. Cahill, Judge of District Court

**STATE OF MINNESOTA
COUNTY OF CROW WING**

**DISTRICT COURT
NINTH JUDICIAL DISTRICT**

State of Minnesota,

Plaintiff,

vs.

Smiley Inc,

Defendant.

Case Type: Criminal

Court File No.: 18-CR-23-219

PRETRIAL ORDER

This matter came before the Court on September 25, 2023, for a hearing on motions *in limine* filed by both parties. To place the Court's rulings in proper context, this order will begin with an overview of the relevant law. This order will then address the motions to admit and exclude evidence.

I. Overview of relevant law.

The State has charged Defendant Smiley Inc with violating Minnesota's criminal laws pertaining to the discharge of hazardous waste. *See* Minn. Stat. § 609.671. Corporations can be charged with crimes and subjected to fines if convicted. Under certain circumstances, corporations can even be dissolved—that is, the State can choose to no longer recognize the corporation. When a corporation is charged with a crime, the stakes can be high, even though there is no natural person who might go to jail or prison.

The State alleges that Defendant unlawfully discharged a chemical called Jaundithium into the Amarillo River. A natural person or corporation¹ who “knowingly disposes of or abandons hazardous waste or arranges for the disposal of hazardous waste at a location other than one authorized by the [Minnesota] Pollution Control Agency or the United States Environmental Protection Agency, or in violation of any material term or condition of a hazardous waste facility permit,” is guilty of a felony. Minn. Stat. § 609.671, subd. 4.

“[A]n act is committed knowingly if it is done voluntarily and is not the result of negligence, mistake, accident, or circumstances that are beyond the control of the defendant.” *Id.* at subd. 2(a). A person's knowledge must usually be inferred by circumstantial evidence, which is entitled to neither more nor less weight than direct evidence. Proof of knowledge can come from the conduct of a person, the person's familiarity with certain subject matter, and any other relevant evidence. *See id.* “Proof of knowledge does not require that a person knew a particular act or failure to act was a violation of law or that the person had specific knowledge of the regulatory limits or testing procedures involved in a case.” *Id.*

Here, of course, the defendant is a corporation. “Knowledge of a corporation may be established by showing that an illegal act was performed by an agent acting on behalf of the corporation within the scope of employment and in furtherance of the corporation's business interest, unless a high managerial person with direct supervisory authority over the agent demonstrated due diligence to prevent the crime's commission.” *Id.* at subd. 2(c).

¹ Going forward, this order will refer to natural persons and corporations as “a person” or “persons” for the sake of brevity.

The allegation in this case is that Smiley Inc knowingly and unlawfully disposed of Jaundithium into the Amarillo River. “Disposal” or “dispose,” for these purposes, “means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that the waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including groundwaters.” *Id.* at subd. 1(d) (incorporating Minn. Stat. § 115A.03, subd. 9).

“Hazardous waste” is “any waste identified as hazardous” under certain Minnesota statutes and administrative rules. *Id.* at subd. 1(f). Jaundithium is considered hazardous waste under Minnesota law. *See* Minn. R. 7045.0135, subp. 1a.G. The Minnesota Pollution Control Agency (MPCA) classified Jaundithium as hazardous waste as of August 1, 2001. *See id.*

Because Jaundithium is, as a matter of law, hazardous waste, the State does not need to prove as a factual matter that Jaundithium is hazardous waste.

II. Admissibility of evidence of prior acts by Maxi Print.

Smiley Inc has filed a motion to admit evidence that the MPCA found that Maxi Print, another print company located near Smiley Inc, unlawfully disposed of hazardous waste into the Amarillo River and entered into a settlement agreement. The State filed a response arguing that the evidence should be excluded.

Generally, “[e]vidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character.” Minn. High School Mock Trial R. Evid. 404(b). But such evidence may be admissible “for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.*²

Smiley Inc has filed a notice of the defense of alternative perpetrator. That is, Smiley Inc plans to argue that someone else—specifically, Maxi Print, which is also a corporation—was responsible for the Jaundithium allegedly discharged into the Amarillo River. To support this claim, Smiley Inc seeks to offer the MPCA’s finding that Maxi Print unlawfully disposed of another chemical into the Amarillo River on a previous occasion.

Because the MPCA’s finding that Maxi Print unlawfully disposed of a chemical into the Amarillo River is a prior crime, wrong, or act, Rule 404(b) applies, and the evidence is admissible only if it meets the requirements of the rule. Minnesota appellate courts have provided a test for determining whether such evidence is admissible when offered by the defense in a criminal case.³

A defendant offering reverse-*Spreigl* evidence must first show that the evidence tends to connect “the alternative perpetrator to the commission of the crime with which the defendant is charged.” *State v. Jones*, 678 N.W.2d 1,16 (Minn. 2004). If the defendant meets that threshold requirement, the defense “must demonstrate (1) clear and convincing evidence that the alleged alternative perpetrator participated in the reverse-*Spreigl* incident; (2) that the reverse-*Spreigl* incident is relevant and material to defendant’s case; and (3) that the probative value of the evidence outweighs its potential for unfair prejudice.” *Id.* at 16-17.

² Whether Rule 404 applies to corporations (as opposed to only natural persons) is an unsettled question in Minnesota. Based on its review of authorities in other jurisdictions, the Court concludes that Rule 404(a) does not apply to corporations; 404(b) does apply to corporations.

³ In Minnesota criminal cases, evidence offered under Rule 404(b) is commonly referred to as *Spreigl* evidence, which is a reference to the seminal case of *State v. Spreigl*, 139 N.W.2d 167 (Minn 1965). When offered by a criminal defendant, evidence offered under Rule 404(b) is commonly referred to as reverse-*Spreigl* evidence.

The Court concludes that Smiley Inc has met the threshold requirement of demonstrating a connection between Maxi Print and the crime alleged in the complaint. Maxi Print, like Smiley Inc, is located on the Amarillo River. The two facilities are within a short distance of each other. Both companies use inks, including Jaundithium, to make their products. And Maxi Print discharged another ink unlawfully. The threshold requirement is met.

The parties agree that clear and convincing evidence demonstrates that Maxi Print participated in the reverse-*Spreigl* incident. Indeed, the MPCA—a state agency—concluded that Maxi Print unlawfully discharged ink into the Amarillo River. Smiley Inc has demonstrated Maxi Print’s participation in the reverse-*Spreigl* incident by clear and convincing evidence.

The reverse-*Spreigl* incident is also relevant and material to Smiley Inc’s case. Smiley Inc claims that Maxi Print is the party responsible for disposing of Jaundithium in the Amarillo River. The fact that Maxi Print committed a similar unlawful act in the past is relevant and material to Smiley Inc’s defense.

But the final question—whether the probative value of the reverse-*Spreigl* evidence outweighs its potential for unfair prejudice—lacks a clear answer in this pretrial setting. Courts often rule on the admissibility of *Spreigl* and reverse-*Spreigl* evidence in the middle of trial. As is often the case, the Court cannot be certain of the evidence the parties will present at trial. Weighing the probative value of the reverse-*Spreigl* evidence against its danger of unfair prejudice is best done during trial. If the defense chooses to present the reverse-*Spreigl* evidence at trial, and if the State objects, the parties can present arguments based on the evidence that has been presented and any offers of proof the parties might choose to make during an argument on the admissibility of the evidence. The Court therefore **RESERVES** ruling on the admissibility of the reverse-*Spreigl* evidence and will rule on its admissibility during trial after hearing arguments from counsel, if the evidence is presented and an objection is made.

Dated: October 6, 2023

/s/ P. Cahill
P. Cahill
Judge of District Court

**STATE OF MINNESOTA
COUNTY OF CROW WING**

**DISTRICT COURT
NINTH JUDICIAL DISTRICT**

Case Type: Criminal

State of Minnesota,

Court File No.: 18-CR-23-219

Plaintiff,

vs.

STIPULATIONS

Smiley Inc,

Defendant.

The State and the Defendant have stipulated and agreed as follows:

1. Smiley Inc is a corporation registered with the Minnesota Secretary of State and is duly incorporated under Minnesota law.
2. Maxi Print is a corporation registered with the Minnesota Secretary of State and is duly incorporated under Minnesota law.
3. Smiley Inc and Maxi Print are located on the Amarillo River, which is located in Crow Wing County, Minnesota.
4. The waters of the Amarillo River flow from north to south. Smiley Inc is downstream of Maxi Print, and J & M Walleye Fish Farm is downstream of both Maxi Print and Smiley Inc.
5. The results of the mass spectrometry testing of water samples by Minnesota Pollution Control Agency (MPCA) scientists, described in the affidavit of Peyton Porter, are admissible. Peyton Porter may testify to these test results.
6. The results of the mass spectrometry testing of water samples and thin layer chromatography testing of ink samples by Dr. Lane Lois are admissible. Dr. Lois may testify to these test results.
7. The results of testing conducted by or on behalf of Nouvel Hakim are admissible. Hakim's tests did not show any specific amount of Jaundithium in the water; Hakim's test simply showed that Jaundithium was present in the water in some amount. Hakim may testify to these test results.
8. Exhibit 1 is a fair and accurate copy of a letter written by Morgan Smiley to the MPCA.
9. Exhibit 2 is a fair and accurate copy of an MPCA Schedule of Compliance for Maxi Print.
10. Exhibit 3 is a photo of a printing press **that was used to produce Yellow Dye #7**, owned by Smiley Inc and located in Smiley Inc's facility in Fishtown, Minnesota. **The photo was taken by law enforcement when executing the search warrant at Smiley Inc.** Exhibit 3 may be admitted during the testimony of any witness with knowledge of the exhibit without further foundation.

11. Exhibit 4 is a photo of a fish obtained from that portion of the Amarillo River that runs through J & M Walleye Fish Farm by a Department of Natural Resources official on April 10, 2023. Exhibit 4 may be admitted during testimony of any witness with knowledge of the exhibit without further foundation.
12. Exhibit 5 is a fair and accurate copy of the Curriculum Vitae of Dr. Lane Lois.
13. Exhibit 6 is a fair and accurate copy of the expert disclosure of prior cases report from Dr. Lane Lois.
14. Exhibit 7 is a fair and accurate map of the area of the Amarillo River in which Maxi Print, Smiley Inc, and J & M Walleye Fish Farm are located. Exhibit 7 also contains the results and locations of testing of water samples conducted by Dr. Lane Lois.
15. Exhibit 8 is a fair and accurate copy of the permit application checklist for industrial process wastewater prepared by Smiley Inc and submitted to the MPCA. Exhibit 8 may be admitted during the testimony of any witness with knowledge of the exhibit without further foundation.
16. Exhibit 9 is a fair and accurate copy of the industrial surface water discharge of process wastewater application prepared by Smiley Inc and submitted to the MPCA. Exhibit 9 may be admitted during the testimony of any witness with knowledge of the exhibit without further foundation.
17. Exhibit 10 is a fair and accurate copy of the MPCA groundwater monitoring report prepared for Smiley Inc. Exhibit 10 may be admitted during the testimony of any witness with knowledge of the exhibit without further foundation. **Raynie Smiley is the individual that handwrote in red ink “No way am I signing this!”**
18. Exhibit 11 is a fair and accurate topographical map of the area of the Amarillo River in which Maxi Print, Smiley Inc, and J & M Walleye Fish Farm are located. Exhibit 11 accurately depicts the relative locations of Maxi Print, Smiley Inc, and J & M Walleye Fish Farm. Exhibit 11 is not drawn to scale. Exhibit 11 is oriented in standard cardinal directions: the top of the map is north; the left side of the map is west; the right side of the map is east; and the bottom of the map is south.
19. Exhibit 12 is a fair and accurate copy of a log maintained by Toxins R Us Commercial Waste and Toxin Disposal. Exhibit 12 depicts the monthly summary of toxin pickups by Toxins R Us from Smiley Inc for the period of January 2022 through June 2023. Exhibit 12 may be admitted during the testimony of any witness with knowledge of the exhibit without further foundation.

Dated: October 9, 2023

State of Minnesota

/s/Robert Yount

Defendant

/s/ Landon Ascheman

STATE OF MINNESOTA
COUNTY OF CROW WING

DISTRICT COURT
NINTH JUDICIAL DISTRICT

Case Type: Criminal

State of Minnesota,

Court File No.: 18-CR-23-219

Plaintiff,

vs.

JURY INSTRUCTIONS

Smiley Inc,

Defendant.

Hazardous Wastes—Unlawful Disposal—Defined

Under Minnesota law, whoever knowingly disposes of or abandons hazardous waste or arranges for the disposal of hazardous waste at a location other than one authorized by the Minnesota Pollution Control Agency or the United States Environmental Protection Agency is guilty of a crime.

Hazardous Wastes—Unlawful Disposal—Elements

The elements of unlawful disposal of hazardous waste are:

First, the defendant disposed of Jaundithium in the Amarillo River.

Dispose, means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that the waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including groundwaters.

Smiley Inc is a corporation and can act only through its officers and employees. The conduct of an officer or employee acting within the scope of his or her employment or authority is the conduct of the corporation.

Second, the disposal was in violation of a material term or condition of a hazardous waste facility permit.

Third, the defendant knew that the disposal was in violation of a material term or condition of a hazardous waste facility permit.

In determining whether or not the defendant knew of the violation, you are instructed that an act is committed knowingly if it is done voluntarily, and it is not the result of negligence, mistake, accident, or circumstances that are beyond the control of the defendant. To determine whether or not the defendant knew the nature of the defendant's act, you should look at the evidence of the defendant's conduct, the defendant's familiarity with the subject matter in question, and from all of the facts and circumstances connected with the case. Knowledge may also be established by evidence that the defendant took affirmative steps to shield the defendant from relevant information. Proof of knowledge does not require that a defendant knew a particular act or failure to act was a violation of the law, or that the defendant had specific knowledge of the regulatory limits or testing procedures involved in a case.

Knowledge of a corporate official may also be established by proof that the person is a responsible corporate official. To be a "responsible corporate official," the defendant must be an official of the corporation and

not merely an employee, and the defendant must have direct control of, or supervisory responsibility for, the activities related to the alleged violation.

Knowledge of a corporation may be established by showing that an illegal act was performed by an agent acting on behalf of the corporation within the scope of employment and in furtherance of the corporation's business interests, unless a high managerial person with direct supervisory authority over the agent demonstrated due diligence to prevent the commission of the crime.

Fourth, the defendant's act took place on or about November 2022-May 2023 in Crow Wing County.

If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty.

If you find that any element has not been proven beyond a reasonable doubt, the defendant is not guilty.

STATEMENT OF NOUVEL HAKIM

My name is Nouvel Hakim, I was born on September 10th, 1990, in St. Paul, MN. Overall, my early life was great. While my parents worked a lot, they always took care of me and my siblings. I found myself alone for much of my childhood just hanging out at the playground. Both of my parents worked in the food market. My dad was a fishmonger, and my mom was the manager of the local grocery store.

After a few years, when I was a young teenager, there was some trouble and my parents decided to move from the city. I had an aunt and uncle, who lived on a farm out West. The grocery store my mom worked at happened to have a location there, and there was an opening for a manager. My mom was able to get the manager job, and after a time, she was able to get my dad a job at the store as well in the meat and seafood section. He would talk about all the differences between being a fishmonger and the grocery store, always fun stories but it was really interesting to me. I think that's where my love of fish came from.

As I grew up, I ended up working for my Uncle Blair. He had a farm on the banks of the river. He grew corn and soybeans. On my breaks I would head over to the river and spend time fishing and imagine having a fish farm or fishery on the banks of the river. I managed to catch a lot of fish over the years. I ended up having some really big ones, and some amazing stories that grew over time, as most fishing stories do. However, I recall these being some of the best fish I had ever seen. My dad agreed a few times when he came fishing with me. It didn't happen often, but I think that says a lot for the quality of the fish given his background.

Anyway, my uncle would come fishing more often than my dad, simply because he was there farming anyway. We would chat about all kinds of things. I guess I must have talked to my Uncle Blair about my dreams of a fishery as well, apparently quite a bit. When I turned 18, he told me that he was talking to a lawyer about carving out a portion of his farm to convert the area to a fish farm. He wanted me to get a college education and if that was still what I wanted to do when I graduated, he would go into business with me. I went to the University of Minnesota and got a degree in Fisheries, Wildlife and Conservation Biology.

He actually got started on the work while I was still at college, I guess he was intent on doing it with or without me. It was slow going, getting the setup and know-how. I didn't know anyone in the fishery business, but my dad had quite a lot of experience with larger fish, and my uncle knew some local minnow farmers, which is a little different from a fishery, but has a lot of overlap. With all that knowledge, we were able to get things up and running pretty quick.

We ended up going with walleye as our fish of choice. We knew there were already walleye in the river, and we could use that natural setting to grow and sell big healthy walleye for our community. From day one, we wanted to make sure that our impact on the environment was as minimal as possible, but that we were delivering a high-quality product to other people who love fish but may not have the time to catch them themselves. We did have a little run in with the government when we first got started. I guess my uncle hadn't known all the documentation and authorization that he needed to get the work done to the river. The river has so many loops and bends. And when it floods, some of those are completely submerged. We didn't really think that cutting out a single loop was going to change things. It was my uncle's land and so he hired some diggers to go in and cut out one of the loops so we could block it off for the walleye. Apparently, we ended up creating something called a tesla valve that slowed the river a bit. I didn't really see the issue; it seemed to keep flowing, and it was his land after all. Not like we were poisoning everything downstream or something.

One of the things that we had to do to get started was to test the river and make sure that the water quality was sufficient for the fish. We suspected it was fine, as we had caught many fish in the past, and we all turned out healthy. That said, we did know about a few of the businesses north of us, but at the time we had a fairly high opinion of them and didn't think that they would do something as underhanded as pollute the river and ruin the environment for future generations. At first the water tests came back perfectly fine; we started our hatchery almost immediately after we got the test results back. We were ready to go.

For several years the fish continued to grow bigger and healthier. Female walleyes grow faster and become larger than males, but we needed to keep them around for future generations. The males tend to reach maturity in two or three years, when they are about a foot long. Females mature in four to five years. We invested in roe (fish eggs) for the first three years, hoping that we would be able to raise our own walleye the fourth year. Our first fish hit the local market in our second year. At the time, we only sold to a select few locations on an exclusive trial basis. The few that we sold got very positive reviews and we continued that trend in our third year. Our fourth year, as I mentioned, we produced our own roe. One thing we didn't anticipate is the popularity of walleye roe. Apparently, people like it, and we didn't see that coming as part of our fishery, but we soon adapted and had even more products for the market. That would have been 2016.

Overall things were going good; our fish were healthy and popular enough that our market kept expanding. We tried to keep it somewhat exclusive to be able to keep the markup at a level where we felt it was a livable wage. We didn't want to price gouge anyone, but we wanted to be able to support ourselves. We even had the DNR come out one year to chat with us about providing stock for some other rivers and lakes that they were managing. Unfortunately, while we ultimately didn't take the contract, one of the DNR officers ended up giving us tickets for failing to register the ATVs we used. Both my uncle and I were charged with Minnesota Rule 6102.0010, and we each had to pay \$128. But that's the only thing I have on my record.

Just recently more than the river started going south. The fish were starting to look a little off color and it just kept getting worse. I would say that we started noticing the change about February 2023. We checked with a few people in the community, some online resources, and my old college professors, but we just couldn't figure out what was going on. But it was a clear change from the fish we had in past years. We started comparing the fish that we had in different locations. It seemed that all the fish that were in water connected to the river water were the ones affected. Even those walleyes we had in external tanks would have river water pumped into the tanks to keep them in as natural an environment as possible. Eventually we reached out to our water tester in April. We do our own in-house testing, but we also get a more in-depth test done every year. For the first time ever, the test came back with Jaundithium in it.

My uncle and I were both just devastated, we were not sure what we could do with the fish, if they were safe to eat, if this would destroy our business. We were trying to get answers and figure out what we should do. I followed up with the nice DNR officer, the one that didn't give us tickets. They told us to reach out to the Minnesota Pollution Control Agency, which conducted testing in May.

We followed up with the investigator and told them what we knew. They went off and did their thing while we kept trying to do damage control. We didn't feel like it would be safe to let people eat the walleye that year, which will end up setting us back several years. Luckily, we did have most of the fertilized eggs in a separate location unconnected to the river, and we had to do a significant amount of restructuring and couldn't use the river for any fish we were hoping to sell.

We talked to a lawyer about the damages that we have incurred. The biggest thing seems to be proving who did it. They said we could get our own investigators, or we could let the State do most of the leg work. If

they end up holding someone accountable, we might not even have to sue, we might be able to demand restitution. I'm not really sure if that's how this will work, but we are hoping that we can recover something from the lost years.

This statement was given under oath. I have had an opportunity to read, review, and update this statement, and I attest that this is a true and accurate statement.

I am familiar with exhibit(s) 4 and 11.

Dated October 1, 2023

/s/ Nouvel Hakim

STATE OF MINNESOTA

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SS.

COUNTY OF CROW WING

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On this 1st day of October 2023, before me personally appeared Nouvel Hakim, to me known to be the person described in and who executed the foregoing instrument and acknowledged that s/he/they executed the same as her/his/their free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Ogaa Ozaawadis
Notary Public – Notary Seal
STATE OF MINNESOTA
Crow Wing County

My Commission Expires: December 31, 2023
Commission #253-218-13

/s/ Ogaa Ozaawadis

Notary Public

My Commission Expires:

12/31/23

STATEMENT OF MORGAN SMILEY

My name is Morgan Smiley. I'm a proud supporter of the World Wildlife Fund, the Sierra Club, Greenpeace, the Environmental Defense Fund, and the Audubon Society, as well as several local charities in Fishtown, Minnesota. I'm also a former owner and the former primary operator of the printing factory Smiley Inc, also known as Smiley Inc Printing, and I'm horrified to know that the family business I ran for so many years has since been used to pollute the environment.

My grandfather, George Smiley, bought the riverfront land where the presses are now and built the county's first newspaper printing press. Nowadays they probably wouldn't let you build a print shop on the river, but pretty much anything went back then. My grandfather eventually handed the land and building off to my father, Guy Smiley, who expanded it, adding different kinds of presses, a garage, a shipping and receiving area, and the storm drains that still run under the buildings today. Again, they probably wouldn't allow that nowadays, but it's all "grandfathered in" now.

When I was young, I wanted nothing to do with the family business, and definitely nothing to do with a corporation or newspaper, even a local one. I left and went out west to be part of a commune growing organic hemp to make sustainable fabric for cloth shopping bags. When I was in my early forties, however, a drunk driver killed my parents, and my siblings and I inherited the family business. I came back to Fishtown to sell my shares to my siblings, but I ran into my (recently single) high school sweetheart Pat, who suggested staying in the business and using it to do some good. Pat and I got married, and my siblings decided to keep their shares but let Pat and me turn Smiley Inc into a print shop for products and publications we support. We'd print anything from menus for a vegan restaurant to campaign t-shirts to adopt rescue dogs. We probably didn't make as much money as we could've, but for us it was more important to make the world better than to make money, and Smiley Inc's main asset became its reputation and goodwill. We didn't have (or want) a "Marketing Department." We let our clients find us. For our clients who wanted the Smiley Inc seal of approval of their product, we'd add our unique Smiley Inc smiley face logo. Smiley Inc sponsors the Fishtown softball team, and everything from the tickets to the apparel features the unique Smiley Inc smiley face, all printed on Smiley Inc presses. Smiley Inc probably uses more yellow ink than anyone else around, even that bigger print factory upstream, Maxi Print.

The way some of our old presses work is that we create large stamps that we put on heavy spinning metal rollers. Each stamp-covered roller picks up one color of ink and stamps that color's layer as what we're printing on passes between the rollers. Periodically, the stamps need to be cleaned, or for longer print runs, replaced. When we need to change colors for a new run, we need to flush the old ink out of the pumps and tubes, clean the rollers, and dispose of the old stamps. This is simple, unskilled labor. Some of my old employees didn't even finish high school, don't have email, and wouldn't know what to do with a computer if you gave them one, but they can clean a press in 60 seconds flat. There were no glorified titles like "Disposal and Reclamation Technician." It was just press operators flushing out pumps and washing ink off of rollers before it dried. It was really easy work, but I always insisted that we catch all the inky wastewater so none of it ended up going down the drain.

The unfortunate reality is that the ink we needed to use is toxic. If I were still running the company, I'd try to switch to that new algae-based ink I just heard about even if it's more expensive, but for the 25 years Pat and I ran Smiley Inc, there just weren't better options. We did our best to make sure that the old ink and inky wastewater were properly disposed of. We had strict procedures for cleaning the pumps, rollers, and stamps to make sure that nothing hazardous to the environment ever went down the drain. Everything that shouldn't end up in water was collected in drums to be shipped out for proper disposal. In the 25 years Pat and I ran Smiley Inc, it never failed an inspection. In fact, the inspectors told us that we ran the most

environmentally friendly outfit they'd ever seen, far above and beyond what the law requires. Everyone who worked at Smiley Inc knew the rules for disposing of the old ink and inky wastewater so that nothing toxic (such as Jaundithium) ended up in nature. Since I had to sign the forms to get the permits to use it, I made sure of that.

Pat and I had three children: Sonny, Cloudie, and Raynie. They practically grew up in the print shop, though nowadays they wouldn't let children near most of that stuff. Raynie knows every inch of the place, and even used to sneak out to the river through the old storm drains until I had the grates bolted down. We did everything we could to raise our children right: organic food, art and music lessons, and yearly camping trips to spend a week communing with nature without any electronics. Raynie, however, always seemed more interested in money and the latest gizmos. I don't understand how parents like Pat and I could have a kid like that. Raynie eventually grew up, as children do, and left home to get over-educated and to add a bunch of letters to trail after "Smiley." Just "Morgan Smiley" was always good enough for me. I didn't need to be "Morgan Smiley, MBA, MFA, CEO, CFO, UFO, UHF, BFF, MVP, PBJ, IDK." Values and running a place like Smiley Inc are things you learn by doing them, not by learning how to count dollars at business school. At Smiley Inc, we didn't even use titles like "president," "director," "CEO," or even "boss." All of Smiley Inc's employees have always just called me "Morgan," and that was good enough for me.

After getting overeducated and racking up an absurd amount of student loan debt, Raynie decided to get into the printing business, but not at Smiley Inc. Raynie actually started working at Smiley Inc's main competitor upriver, Maxi Print. After Raynie got fired from Maxi Print, Pat convinced me to hire Raynie, though I was against it. I doubted there was any value in Raynie's overpriced capitalist education, which I figured would be useless or worse than useless. As soon as Raynie was officially an employee, I had a new self-proclaimed "Deputy Director of Research and Development" to deal with, as if the ancient practice of sticking ink to paper and fabric required "research and development." Raynie called a family meeting with my siblings and cousin Itty and put on a slick "Grand Plan" presentation for overhauling Smiley Inc into a money-printing machine. I'll admit that the new lighting system was an improvement, but to me the rest of Raynie's "Grand Plan" looked like it would do more harm than good. But Itty got my siblings on board with Raynie's "Grand Plan," and I was done running Smiley Inc.

Raynie began running the company with a new office nameplate that read "Raynie J. Smiley, MBA, MFA, President, Director, and CEO." Although I was no longer making decisions at Smiley Inc, I was still a shareholder, so I hung around to try to talk some sense into Raynie, but to no avail. Raynie micro-managed everyone, constantly making rounds and dictating every step of every process. For the employees, it was like working in a surveillance state. Raynie also cut every corner there was to cut, and even added a **night second** shift and replaced the oldest presses with allegedly more efficient computerized presses that no one knew how to run. Do you know what mining up the metals to make computer components does to the environment? I can adjust the knobs on an old ink pump to just the right pressure in my sleep, but I couldn't even figure out how to spin up one of those computerized presses. I don't know how those new presses work, but I think that Raynie computerizing everything was just an excuse to clean house and get rid of the "computer illiterate" employees and replace them with cronies. Half of Smiley Inc's old employees gave up trying to run the computers running the machines and had to retire early or find other work. Raynie replaced the old employees with like-minded kids who seemed to know more about computers than printing. And Raynie wouldn't let even *me* into the new "Disposal and Reclamation Department" secure area. (When I ran the place, we just called it the "drain room," and there wasn't even a door, let alone a lock or badge-reader.) Only Raynie and the new "computer literate" hires were allowed in the D & R room because the hazardous waste disposal was now supposedly computerized and required training on the new systems.

I noticed that Smiley Inc didn't seem to be shipping out as many wastewater drums even though the presses were now running all day, every day. I didn't have access to the records, and I wasn't counting or anything, but it just felt like there should've been more wastewater drums, especially since we were printing more than we ever had. Raynie said I didn't know what I was talking about, and that it was just that the computerized presses were more efficient, used less ink, and needed less water to clean, which generated less wastewater. I may not understand computers or how these new presses work, but computers or not, fabric is fabric, paper is paper, ink is ink, and I know that you can't clean a press without making toxic wastewater that has to go somewhere. I think that at night there was wastewater going down the old storm drains in the locked D & R room, though I never actually saw this happening.

Finally, one of Raynie's new hires (the one-person "Marketing Department") started aggressively soliciting business from institutions whose values were against everything Smiley Inc stood for. That was the last straw. I confronted Raynie about everything: The obsession with saving money, pushing out long-time loyal employees by computerizing the presses, the low levels of wastewater, and the importance of maintaining Smiley Inc's values and reputation. Raynie and I had a blowout fight. I still remember it like it was yesterday. Raynie said that the old presses were antiques. I said that may be true, but they still worked and shouldn't have been replaced until they didn't. Raynie said that the computerized presses were actually better for the environment in the long run and that I don't trust them just because I don't understand how they work and because I'm afraid of computers. I said that I'd been running presses for longer than Raynie had been alive, and no computer could be more efficient than an experienced press operator. Raynie said that no one ever worked with a "sense of urgency" because I never fired anyone. I pointed out that some of Smiley Inc's employees had practically helped raise Raynie and were like family. Raynie said that I turned down business just because the business wasn't hugging trees or washing oil spills off of baby ducks. I told Raynie that as long as I was alive, Smiley Inc's reputation wouldn't be used to promote the corporate takeover of the planet Earth. Then Raynie ordered me to stay away from Smiley Inc. My youngest child ordered *me* to stay away from the company that Pat and I reinvented, the company that we grew into a symbol of what every company should be about: leaving the world better than how you found it. I sometimes can't believe Raynie is my child. Where did Pat and I go wrong?

Even after I was out, I stayed plugged into the community, teaching classes in weaving and tie-dye at the local community center. As much as it shames me to admit this, when I heard about the pollutants in the river, I knew it must've been Raynie. That's why I blew the whistle and reported Raynie as the likely polluter. That's why I told the inspector about old storm drains that run under the buildings and to the river. Smiley Inc's main asset is its reputation. If everyone knows that Smiley Inc of all places was dumping toxic chemicals into the river, it'll be ruined as a business. But I can save it. *My* reputation is still intact. I'll undo the damage. I'll restore its reputation. Once I'm running things again, I'll save Smiley Inc and its legacy. And the first thing I'm going to do is recycle every computer on the property.

This statement was given under oath. I have had an opportunity to read, review, and update this statement, and I attest that this is a true and accurate statement.

I am familiar with exhibit(s) 1, 3, 8, 9, 10 (through 2018), and 12 (through 10/31/2022).

Dated: October 1, 2023

/s/ Morgan Smiley

STATE OF MINNESOTA

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COUNTY OF CROW WING

)

SS.

147 On this 1st day of October 2023, before me personally appeared Morgan Smiley, to me known to be the
148 person described in and who executed the foregoing instrument and acknowledged that s/he/they executed
149 the same as her/his/their free act and deed.

150
151 In testimony whereof, I have hereunto set my hand and affixed my official seal in the County and State
152 aforesaid, the day and year first above written.

153
154 Ogaa Ozaawadis
155 Notary Public – Notary Seal
156 STATE OF MINNESOTA
157 Crow Wing County
My Commission Expires: December 31, 2023
Commission #253-218-13

/s/ Ogaa Ozaawadis
Notary Public
My Commission Expires:
12/31/2023

STATEMENT OF PEYTON PORTER

My name is Peyton Porter. I am an investigator with the Minnesota Department of Public Safety (“MDPS”), where I focus on environmental compliance and enforcement issues related to industrial and commercial facilities across Greater Minnesota. I was the lead investigator into the hazardous-waste pollution that transpired at the Smiley Inc facility in Fishtown, Minnesota. I am writing this statement to detail my credentials, explain my investigation, and discuss my findings.

I received my Bachelor of Science degree in 1998 environmental science from Minnesota State University, Mankato. After college, I worked for four years as a data analyst for an environmental consulting firm, Kitchen Vandelist & Eichenberger LLC, in the Twin Cities. The job was heavy on putting together various quantitative models to support decision-making by the more senior members of our case teams. I spent a lot of time buried in Excel. But the job was also science-heavy, which I enjoyed, and so I went back to school and earned my master’s degree in environmental policy from the University of Minnesota, Twin Cities, in 2004.

The MDPS was building out its environmental-related investigation unit around the time that I graduated from the U. I come from a family filled with law-enforcement officials, and almost all of the officers in my family have worked throughout Greater Minnesota. My grandfather was the longtime sheriff in Meeker County, my mother was a detective in Wright County before her retirement, and my uncle is a patrol officer up in the Thief River Falls area. I did not see myself working on the frontlines as they did, but an environment-focused investigative job with the MDPS seemed like a good next step for me. I was proud to carry forward our family tradition of public service in a way that I am passionate about.

I am based in Brainerd, Minnesota. I work there in a satellite MDPS office along with a handful of other MDPS employees. At a high level, it is our responsibility to police our state’s environmental laws. We partner closely with the Minnesota Pollution Control Agency (“MPCA”), and a few MPCA employees who sit with us daily in Brainerd occasionally help with our investigative work, when it is appropriate. We also share forms, to make investigations and record-keeping cleaner.

As an environmental investigator with the MDPS, I am probably not what jumps to mind when most folks think of a “police officer” or “law enforcement.” My job tends to be more back-office, and a lot of my day-to-day responsibilities are fairly routine. There is a lot of paperwork, which I suppose comes with the territory in a compliance position. Along with my partners at the MPCA, I spend a lot of time tracking down and following-up on various regulatory filings from companies that operate industrial facilities across our state. There are hundreds of small-to-medium-sized businesses in Minnesota whose operations have environmental implications, if not tens of thousands of these businesses, and they each need to submit various monthly and annual forms to the State reporting on pollutant levels. They also need to submit certification documents attesting that they are complying with the laws of Minnesota when it comes to handling hazardous materials and more. Follow-up questions on our end inevitably come up, and I spend a lot of time “investigating” those issues. That involves emails, phone calls, and oftentimes a site visit to inspect the facility itself. Most of the time there is not a problem. The paperwork is meant to be proactive, in a way. We hope that we will spot issues early enough that they do not turn into environmental disasters and then nip those issues in the bud. But paperwork has its limits, and if a company is going to act in bad faith, there is only so much reports can do to prevent it. Then it is about catching it quickly. Our office has been prioritizing more “active” investigations into polluters as of late. And that is especially true after the COVID-19 pandemic and now that inflation is at its highest rates in years. Economic hardship has led some companies to take environmental shortcuts in an effort to save a buck, endangering our State’s waterways and prairies and more in the process. The MDPS and MPCA are trying to stay vigilant.

That brings me to this case. The MPCA received a couple of citizen complaints about the disposal of toxic wastewater containing Yellow #7 at the Smiley Inc printing facility. Smiley Inc is a printing company that prints supplies for a variety of businesses. The printing jobs include everything from t-shirts to periodicals to billboards and more. The first of the two complaints came from Morgan Smiley. Morgan was the longtime owner of Smiley Inc before Morgan's retirement and the passing down of the leadership of the business to one of Morgan's children, Raynie Smiley. The fact that the former owner of an industrial printing facility was submitting a complaint to the MPCA about their child polluting was unusual and worth looking into carefully, to put it mildly. Morgan explained that they believed that, after Raynie took over the company, Raynie began cutting corners with the facility's wastewater-disposal processes in an effort to save costs when cleaning printing presses. Morgan suspected Raynie was dumping wastewater into storm drains beneath the facility, which flow into a nearby river. The second complaint came in around the same time as Morgan's complaint, but the two were independent of one another. This complaint was from a local walleye farmer in the Fishtown area, Nouvel Hakim. Hakim explained that they noticed an odd coloring on their fish, which could be consistent with a Yellow #7 leakage. Nouvel did some homework in an attempt to triangulate what was causing the discoloration, and they thought that it was connected to the river water. Putting Nouvel's tip together with Morgan's tip, we at the MDPS thought that something was suspicious going on at Smiley Inc, and so we launched an official investigation. We intended to gather more evidence before applying for a search warrant for the premises.

Before going further, I should share that I was not the original investigator assigned to the Smiley Inc case. I actually lobbied my manager at the MDPS for the opportunity to get involved. I have worked at the MDPS for almost two decades, largely in the back-office analytical and investigative functions that I described above. It is rare that an investigation like the one at Smiley Inc comes about, with two credible sources complaining about brazen dumping of toxic wastewater. I wanted to be a part of it. And it is well known within the office that I have been passed up for several promotions because I had not built up a portfolio of investigative work at the level of some of my peers. I knew that I needed to build a more well-rounded skill set to put myself in position for the next job and the pay increase. Fortunately for me, and I would like to think fortunately for Fishtown, I was named lead investigator.

To get the evidence we needed, the MDPS decided that I would operate "undercover" in Fishtown to try to figure out what was happening at Smiley Inc without tipping off Raynie. That was abnormal—the MDPS usually does not invest those kinds of resources into our "routine" investigations. Nor was I trained for it. But then again, we do not usually get smoking-gun complaints of this nature, and there was not a huge safety risk to me. Plus, with the State of Minnesota's emphasis on protecting our environment, and my desire to do my first boots-on-the-ground investigation well, I thought it made sense for us to go the extra mile here. I began the investigation by reviewing documents on file with the MPCA that were submitted by Smiley Inc, including the industrial surface water discharge of process wastewater application (Exhibit 9), and the permit application checklist for industrial process wastewater (Exhibit 8).

I applied for a part-time, low-level janitor position at Smiley Inc where I could keep my eyes and ears open for additional evidence of wastewater dumping. A couple days after I sent in my application, Raynie and I spoke over the phone. Thirty minutes later, I was hired.

I spent almost three weeks at Smiley Inc before Raynie suspected that I was up to something and fired me. In that three-week window, I saw many instances of suspicious activity related to Smiley Inc's treatment of its wastewater. The Yellow #7 used in the ink at Smiley Inc's facility is toxic. Everyone there knew that, and the regulators knew it, too. That was not the problem. The issue was Smiley Inc's disposal of that ink during its cleaning process. It is paramount that none of the Yellow #7 leak into the state's waterways, as it would contaminate fish and many other freshwater creatures.

From my discussion with Morgan Smiley, I understand that Smiley Inc used to have a rigorous, manual procedure for cleaning the pumps, rollers, and stamps used in the printing process. The process sounded expensive. Morgan's employees would collect any toxic wastewater emitted during that physical cleaning process in storage drums, and then Morgan would pay to ship those drums for their proper disposal. That is lawful, and it is consistent with the MPCA's records for the Smiley Inc facility. Not once was there a violation under Morgan's regime. But it is hard labor and expensive.

When I began working at Smiley Inc, however, there was a new process in place for cleaning the printing presses. Raynie had replaced some of the old presses with newer models and installed a computerized cleaning system to replace the manual labor. The idea, as Raynie explained it to me when I asked about those machines during my orientation, was that the automated method would save not only labor hours, but also would decrease the total amount of wastewater produced in the cleaning process by as much as 50%. Put another way, if a full day of printing used to create 10 drums full of wastewater that needed to be disposed of, now only five drums were produced from an equal amount of printing. That potentially meant big cost savings for Smiley Inc and, in turn, increased profitability. If the computerized process was safe, then it would be great all around--I suppose except for those older employees who lost their jobs during the transition.

But things never did seem to add up. The volume of printing at Smiley had been increasing each month ever since Morgan handed over the reins to Raynie. I think that is because Raynie was willing to work with clients that Morgan refused on ethical grounds. At any rate, the volume of printing at Smiley Inc had increased, but the volume of wastewater drums being sent out for disposal was down by nearly 50%. That did not make sense. At best, if Smiley Inc's volume of printing had remained flat, the volume of wastewater drums should have decreased by only 50% due to the efficiency gains from the computerized cleaning process.

The computerized process would take the wastewater produced during cleaning and then funnel it into a separate processing room that automatically filled up the drums. That room was locked to most employees. You needed a special badge to get in. Raynie told me that this badge requirement was because of the toxicity of the wastewater produced during cleaning, and so it was a safety mechanism to ensure only those with proper training were inside. But I didn't find that explanation credible. Mere exposure to wastewater containing ink isn't hazardous, like some chemicals are. The problem is when people, fish, or plants are actually ingesting water containing ink--and that doesn't become an issue until the ink is in a river or lake. Raynie's explanation for needing a badge to get into the processing room was even less credible to me because I saw Raynie coming and going from the disposal room regularly. Raynie, the head of the entire company, had no reason to be directly involved with the processing, but in and out of that room Raynie went, throughout the day.

After the drums were filled, employees transported them ~~overnight~~ during the second shift when there were fewer employees working (this was another change instituted by Raynie) to the loading dock for pickup. Typically, someone would come by to pick up the drums once per week, and so every morning the collection of drums sitting by the loading dock would get larger and larger. I kept a tally. On some days, Smiley Inc would print more than it did the day before, but the next morning there would be fewer drums of wastewater. It should have been the other way around. I suppose it is possible that the employees who were authorized to enter the processing room just waited to move the drums out to the loading dock on a different day, but this pattern happened enough times that I find that explanation unlikely. The fact that the overall volume of wastewater was down disproportionately, and on an appreciable number of days there would be less wastewater than expected for the previous day's volume of printing, seemed highly irregular.

My hypothesis was that someone was illegally dumping wastewater into the storm drains overnight. My shift ended at 6:00 p.m., and so I was not able to stick around the facility to look around at night. A separate, smaller crew worked during those hours and we did not overlap much. Raynie seemed to keep the two groups separate. All the employees who worked the late hours knew Raynie well, too, and all were recent hires. That seemed odd to me. You would think that Smiley Inc would have given the most junior employees the least desirable shifts. But no, the employees who were the closest to Raynie got the graveyard shifts, and the rest of us who were relatively new worked the facility during normal hours. My sense is that Raynie was using these individuals to dump the wastewater.

My attempt to get into the drum-processing room failed. It was probably a mistake, but I asked one of the credentialed employees if they would let me join them for a shift so I could better understand how the Smiley Inc business works. They immediately reported me to Raynie. Raynie fired me on the spot and frankly seemed a little spooked. Raynie's reaction was suspicious. Sure, Raynie had made it clear that only authorized employees were allowed in the processing room, but Raynie never explained why beyond the safety considerations, which are simply not credible. My firing seemed like an overreaction, especially for a new employee, and even more of a reason why I thought something bad was happening inside that room.

After I was fired, the MPCA, accompanied by some Crow Wing County sheriff's deputies, executed a search warrant on the facility. First, we searched inside the drum-processing room, and it was a mess. We found numerous drums, many of which were unmarked. That was problematic. Drums carrying toxic wastewater need to be labeled appropriately for obvious safety reasons. Some drums were tipped over, too. And as I anticipated, there was also a line to the storm drains inside the room, which flowed into the river. Second, we seized Smiley Inc's Disposal Log (Exhibit 12), which shows a significant decrease in the number of barrels sent for disposal as well as a decrease in cost. The decrease overlapped with the implementation of the computerized cleaning process, but it still did not add up. Based on how much printing I saw done while I was at the facility, there should have been many more drums of wastewater produced, even assuming that Raynie's computerized process was 50% more efficient than the manual process that Morgan had used.

We also investigated the printing facility upriver from Smiley Inc, Maxi Print. They let us come onto the premises, which sped up the whole process. The facility uses some Jaundithium, but it didn't look like they use anywhere near as much as Smiley Inc. I peered into their storage room, and everything met the regulatory requirements. I also did my due diligence and reviewed public records. It appeared the MPCA previously cited Maxi Print for dumping hazardous chemicals into the Amarillo River back in 2020. But when I looked into it further, the chemicals were different from Yellow #7, and Maxi Print worked with the MPCA to fix the problem! It didn't even result in a fine - just a Schedule of Compliance, which is a fancy term for a joint agreement. Just a big green and red nothingburger.

I did not bother opening up an investigation into Maxi Print based on the current allegations, as we figured that there was no way Maxi could be pumping out a high enough volume of wastewater containing Jaundithium to cause discoloration in the local walleye population.

Finally, we took two water samples from the river water near the storm drain that drained water from Smiley Inc. MPCA scientists ran both samples through a mass spectrometer, which is generally accepted in the scientific community as a reliable method of testing for the presence of chemicals such as Jaundithium in water, as well as quantifying the amount of the chemical in the water. Both samples yielded the same result: the water contained 40 ppt (or parts per trillion) of Jaundithium. Ideally, there would be no Jaundithium in the water at all, given its hazardous nature. But Smiley Inc's wastewater permit allowed readings of up to

5 ppt of Jaundithium, so that was the limit Smiley Inc had to work under to comply with the law. Jaundithium can have serious environmental consequences if it gets into the water in high enough quantities, and that's why the limit was 5 ppt. Other than the two samples we tested showing results of 40 ppt of Jaundithium, the MPCA did not conduct additional testing, as we did not believe it was necessary.

It is commonly accepted in the scientific community that chemicals in water will generally travel downstream. If you find a small percentage of chemicals upstream, and a large percentage downstream, well, that's just fluid dynamics. But I acknowledge there is evidence showing that particles can travel a short distance upstream. Scientists call it "upstream contamination." This happens because particles originally located only at the surface of the lower water area can contaminate the upper water source by "riding" on water currents that transport it upstream. But that can't explain away why there is 40 ppt of Jaundithium right outside of Smiley Inc's storm drain, and 100 ppt immediately downstream from that.

It is my professional opinion that the Smiley Inc. was dumping toxic wastewater containing Yellow #7 down the storm drain and into the river in an effort to save money. It worked for a bit. The company's financial performance improved significantly, with the primary driver being decreased wastewater disposal costs. But Smiley Inc's decision to dump Yellow #7 caused irreparable damage to Minnesota's waterways and the livelihoods of local farmers.

This statement was given under oath. I have had an opportunity to read, review, and update this statement, and I attest that this is a true and accurate statement.

I am familiar with exhibit(s) 1, 2, 3, 4, 8, 9, 10, 11, and 12.

Dated: October 1, 2023 /s/ Peyton Porter

STATE OF MINNESOTA)
) SS.
COUNTY OF CROW WING)

On this 1st day of October 2023, before me personally appeared Peyton Porter, to me known to be the person described in and who executed the foregoing instrument and acknowledged that s/he/they executed the same as her/his/their free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Ogaa Ozaawadis
Notary Public – Notary Seal
STATE OF MINNESOTA
Crow Wing County
My Commission Expires: December 31, 2023
Commission #253-218-13

/s/ Ogaa Ozaawadis
Notary Public
My Commission Expires:
12/31/2023

STATEMENT OF DR. LANE LOIS

I am Dr. Lane Lois, and I have professional training and education in the field of chemistry. I am here today because I have professional experience with the chemical composition of ink. I am certified as a Specialist in Chemistry (ASCP), and a Certified Chemical Technician (CCT). I was hired by the Defendant to look at this case and offer an opinion on the matter.

I graduated from the University of Pennsylvania with a major in chemistry and a minor in history. I went on to pursue my PhD in chemistry from Cornell University. There I was able to combine my professional and personal interests. I have always been interested in the history of printmaking. My research project focused on the chemical compositions of ink used in large-scale printmaking. I successfully completed my dissertation on the same topic. If it's fit to print, I study it!

I'm not going to lie; I had a hard time getting a job after graduating. I don't think my grades reflected my true skills. Anyways, I worked for two years with a consulting firm called "Experienced Experts." They worked with law firms throughout the country to provide experts (and expert testimony when needed) on issues requiring chemical analyses. It was pretty amazing: if a big law firm needed an expert to testify for one of its clients, Experienced Experts would simply match up their attorneys with an expert who could offer them a favorable opinion. Of course, experts like me would only offer a favorable opinion if it was supported by solid data.

During those two years, I testified in three cases involving questions about inks and their chemical compositions. Cornell University allowed me to use their chemical testing facilities as an independent contractor. Coincidentally, all three companies who hired me were happy with my opinions and advice. Their attorneys must have chosen good cases because the data always ended up supporting their claims. My experience there helped me get a job. I was hired three years ago by one of the largest ink manufacturers in the United States, Metropolis Chemical. I now work in their lab developing inks with better color intensity and absorption property.

Metropolis Chemical, or "MetChem," has been a great employer. They allow me to provide expert testimony as an independent contractor. I have provided expert advice to three companies since joining MetChem. I think MetChem might benefit from it. Of the last three ink companies that hired me as an expert witness, all three ended up working with MetChem. That's a crazy coincidence. But I am proud that my expertise and testimony has been so well received. The basic information for each of my previous expert witness cases can be found on my Expert Disclosure of Prior Cases, Exhibit 6. You can also see my full Curriculum Vitae as Exhibit 5.

What is printmaking? It is the artistic process of transferring an image from one common template (called a "matrix") onto a different medium. It has three general steps: you create a matrix for the template; you apply ink to the matrix; and you press the print medium—something like cloth or paper—against the matrix to create the print.

But you can't print anything without ink. This is where the chemistry comes in. Ink is a chemical solution. Chemically speaking, it is a colloidal system of fine pigment particles dispersed in a solvent. It has two main components: a solvent, and a pigment.

The "solvent" makes the pigment "stick" to the printed medium. People historically used oil mixtures as a solvent, but now most ink solvents use plastics—or even algae to be environmentally conscious.

The “pigment” gives ink its color. The history of pigments is fascinating. In the old days, people would make black ink by using the soot from bonfires or lamps, or they would even grind up bones they had charred in a fire. In fact, the word “ink” comes from an ancient Greek word meaning “to burn.”

Today, most pigments come from a factory. You can’t just use charcoal or charred bones for ink nowadays. Some factory pigments contain chemicals that are toxic to the environment. You may have heard of “forever chemicals?” Forever chemicals are polyfluoroalkyl substances, or “PFAS,” and some commercial inks contain them.

I don’t run an ink business, but I assume that finding the right ink could mean millions for a company. Also, with the advent of using PFAS in inks, purchasers have to pay for the proper disposal of toxic chemicals. I have overheard colleagues in MetChem’s marketing division talk about how some of their buyers’ skirt laws on disposal because it can be the difference between making a profit or losing money. Of course, I never heard anyone in this case say anything like that, but those guys in marketing said it can be a difference maker.

I was hired by the Defendant in June of 2023 to analyze the chemicals used in Yellow #7, and to test whether those chemicals were present in the surrounding area. Defendant approached me to provide an expert opinion to challenge results they had received that could be perceived as criminal liability. I spent a combined total of 80 hours on this case preparing for trial. As a qualified independent contractor, I charged \$200 per hour.

I began by reviewing relevant documents, including those that were submitted by Smiley Inc to the MPCA. Those included the industrial surface water discharge of process wastewater application (Exhibit 9), and the permit application checklist for industrial process wastewater (Exhibit 9), as well as Smiley Inc’s Toxins R Us disposal log (Exhibit 12), which was seized during a search of Smiley Inc’s premises. But I am a chemist by trade. For that part, I ran Y#7, or I guess you would call it Yellow #7, through a thin layer chromatography (“TLC”) test. TLC is a commonly accepted scientific technique used to separate the components of a chemical mixture.

Y#7 is a relatively standard commercial ink. It employs a typical plastic-based solvent, but the chemical makeup of the yellow pigment uses a particular chemical called Jaundithium. Jaundithium is a known PFAS. The ratio of Jaundithium in the Y#7 pigment is relatively high when compared to other inks. The TLC returned results of 100 ppm (or parts per million) in the pigment. In my personal experience working for MetChem, most industry-standard yellow pigments contain between 25 and 75 ppm of Jaundithium. Put simply, Yellow #7 uses quite a bit of Jaundithium. That’s what gives it the bright yellow color.

Note, it isn’t illegal to use ink containing 100 ppm of Jaundithium; you just have to properly dispose of it. But as a chemist, I can only speculate on what constitutes proper disposal.

I also tested three areas on the Amarillo River for the presence of Y#7. I tested the downstream waters located at J & M Walleye Fish Farm; I tested the river water located along the riverbank fifty yards upstream from the storm drain connected to Smiley Inc’s system; and I tested river water located one-thousand yards further upstream from Smiley Inc. Note: from Smiley Inc, Maxi Print is located one mile upstream, and the walleye fishery is located one-and-a-half miles downstream. I utilized the same process for each test:

- I took 2 samples from each location, one week apart. Averaging is an expected standard for values which are close together in value to establish a composite value for comparison.

- I ran each sample through a mass spectrometer at Cornell University to determine the presence and ratio, if any, of Jaundithium. Mass spectrometry is generally accepted in the scientific community as a reliable method of testing for the presence of chemicals such as Jaundithium in water, as well as determining the amount of chemical per unit of water.

- I averaged the 2 samples from each location to produce a meaningful result.

I found the following results:

- J & M Walleye Fish Farm: 100 ppt (parts per trillion)
- River water 50 yards upstream from Smiley Inc: 30 ppt
- River water 1000 yards upstream from Smiley Inc: 10 ppt

I prepared a map that shows where I took water samples and the results of my analysis from each location.

Finally, I obtained a sample of yellow ink used by Maxi Print, the factory located upstream, and ran it through the TLC test. Maxi Print's ink utilized an industry standard plastic-based solvent mixture as well. The ink's pigment also contained Jaundithium in the amount of 50 ppm, which was half the amount contained in Y#7. That is still a relatively high amount when compared with some other inks.

These findings led me to a number of conclusions. First, Jaundithium is not a naturally occurring chemical, so its presence in the area must be attributed to some human conduct. I cannot say whether was intentional or unintentional. For instance, some guy from North Dakota could have driven to the area and simply dumped it in the river. No way to know.

Second, both Smiley Inc and Maxi Print use yellow inks containing Jaundithium. Their inks contained different ratios of the forever chemical, but both had higher amounts when compared to some other inks used in the industry.

Third, the proximity of the two factories to the polluted area gives rise to a reasonable inference that the Jaundithium could have come from one or both of the factories. Smiley Inc's storm drain did empty directly into the water, but Maxi Print was also located on the same river and water basin.

Fourth, the presence of Jaundithium in the water upstream from Smiley Inc suggests it could have come from Maxi Print. I feel the need to caveat this finding. My expert opinion only goes so far, but I can say two things about basic fluid dynamics. The Amarillo River flows from the North to South. As a general principle, that means water—and whatever is in the water—will flow downstream to the south. Second, there is scientific evidence showing that particles can travel a short distance upstream. It's called upstream contamination. This happens because particles originally located on the water surface can contaminate the upper water source by "riding" on water currents that transport it upstream. But that "riding" amount would only be a small amount of chemicals. Still, it's scientifically possible.

Fifth, Jaundithium is a "forever chemical," so it is difficult to estimate how long it took for Hakim's walleye fishery to reach 100 ppt. If someone was dumping small amounts of Jaundithium for years, for example, it still might yield that result. The fishery could also reach 100 ppt if someone dumped a lot in a short amount

of time. I understand the Prosecution in this case is trying to pin the toxic amount on Smiley Inc since Rainey Smiley took over the company, but I cannot state with any certainty that such an amount of Jaundithium would accumulate in that period of time. Now, I suppose I can't say it *couldn't* reach 100 ppt downstream in that amount of time, but I also can't say that it did.

I did not feel the need to test the waters immediately downstream from Smiley Inc's storm drain. I also did not feel the need to test the water immediately surrounding Maxi Print. I had sufficient data from the fishery and two points of water testing upstream from Smiley Inc. I understand the Prosecutors may have additional data, but I don't believe it changes my conclusions. I also did not perform the tests, so I cannot trust the results. I believe the data I collected fully and adequately supported my expert opinions on this matter, as it has in my previous cases.

This statement was given under oath. I have had an opportunity to read, review, and update this statement, and I attest that this is a true and accurate statement.

I am familiar with exhibit(s) 5, 6, 7, 8, 9, 10, 11, and 12.

Dated: October 1, 2023 /s/ Dr. Lane Lois

STATE OF MINNESOTA)
) SS.
COUNTY OF CROW WING)

On this 1st day of October 2023, before me personally appeared Dr. Lane Lois, to me known to be the person described in and who executed the foregoing instrument and acknowledged that s/he/they executed the same as her/his/their free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Oгаа Озаавадис
Notary Public – Notary Seal
STATE OF MINNESOTA
Crow Wing County
My Commission Expires: December 31, 2023
Commission #253-218-13

/s/ Ogaa Ozaawadis
Notary Public
My Commission Expires:
12/31/2023

STATEMENT OF RAYNIE SMILEY

My name is Raynie Smiley and I am the President, Director and CEO of Smiley Inc. FYI, Smiley is set up as a closely held corporation¹, and is owned and controlled by family members who serve as a sort of Board of Directors. Right now, the Board/owners of Smiley Inc consist of me, my parents, Uncle Fudgie, Aunt Candy, siblings Sunny and Cloudie, and Cousin Itty. When me and the siblings turned 18 (we're all over 18 now), our parents divided their shares between them and the 3 kids, so each owner has between 12 and 13 shares.

A little background about myself. I was born and raised in Fishtown, Minnesota and came back to run Smiley Inc after college and getting some other experience under my belt. I have two siblings, Sunny and Cloudie (who later changed their name to Charley). My parents were post-60s hippie-types, who then moved into the tree-hugger group.

I attended Fishtown High and graduated with pretty good grades. I want to mention here that I also took Chemistry 101 AND 102 in high school, so I know a little about chemicals. I went to Western University. My parents wanted me to get a degree in art or music. I wanted neither. What I did want: to make money! I got a B.S. degree in business and then an MBA at the Carlson School of Management at the University of Minnesota. Very prestigious!

Growing up, I spent lots of time after school and during the summers at Smiley, helping out and learning the biz. Man, I can remember the foul smell from the old days, before I introduced some modern techniques and brought the factory into the 21st century. I should mention, however, that the smell didn't keep me away from exploring the underground drainage system that ran under Smiley Inc and out to the river. Some funky stuff down there!

After college, I got a job at Maxi Print, and what a difference from Smiley! Maxi was a totally high-tech place and was so much more profitable than Smiley. I learned a lot by studying management, including how to maximize ink processing and lower costs. I got let go from Maxi on December 30, 2021, after only six months. They said my position was eliminated but I think I was just too progressive, and some managers thought I was after their jobs.

After I left Maxi, I moved back in with the parents to get myself grounded and find a new job. Morgan asked if I wanted to "put my capitalist education to good use" and come to work at Smiley. I saw this as a great opportunity to modernize Smiley and improve its profitability. I could score big bucks now and in the future! Besides, I always thought of Morgan as kind of hippy-dippy, but they seemed to be becoming dippier the past few years and was losing interest in the business, or at least becoming uninterested in making positive changes to improve the business. I heard Morgan started teaching classes in weaving and tie-dye at the local community center. Not really sure how Morgan is doing these days; we don't talk much anymore.

When I started at Smiley on February 6, 2022, I was made the Deputy Director, in charge of Research and Development. I immediately saw that there were a lot of changes that could be made to cut costs and increase profits. I installed better lighting (environmentally and cost friendly), upgraded the break areas, improved some of the piping systems used to move the ink sludge from the printing area to the Disposal and Reclamation area. I proposed a whole lot of other changes to Morgan and put together a presentation

¹Note: there is no public trading of stock of a closely held corporation and its common for family members to control the organization and make up a Board. Information about how Smiley is organized is provided for context.

my Grand Plan, which included updating the presses, using different types of inks and lowering disposal costs. These would have been friendlier to the environment but Morgan would have none of my Grand Plan. “The old ways are the best ways” became Morgan’s mantra. Finally, at a family Board meeting and brunch at Cousin Itty’s, I had the chance to present my ideas. They were really impressed! While the family were always into using down-to-earth (read: old-fashioned) methods, they were also getting into thinking about retirement. And weekend protest retreats or something. A more profitable Smiley Inc could make weekend yoga retreats or commune stays a reality. Cousin Itty suggested that perhaps Morgan could use some leadership support and that we should give Raynie’s Grand Plan a try. Morgan blew a gasket, said they would never agree to my Grand Plan and certainly not to sharing a leadership position with me – Morgan called me a puffed-up, pompous something and they couldn’t believe I was their kid. Morgan stormed off, saying they were done with Smiley Inc and the family could do what it wanted.

That family meeting was on Friday, November 25, 2022; the following Monday I was named CEO of Smiley Inc. I immediately implemented some changes. First, I made it my business to know all about everything that was going on in the company and on the floor. I instituted in-person, weekly meetings with all the managers of each department, even those departments that had only one person. Each manager gave an oral report and, since all these managers were at every meeting, it wasn’t necessary to take written notes or minutes. I knew every facet of Smiley Inc.

Second, I hired some new people – younger, talented people who knew what a computer was and also had some experience under their belt. I hired Marty Jones, chemist, Sandy Smith, former journalist and now head of Smiley Inc’s newly formed Marketing Department. Sandy is a real go-getter: they went out and solicited business from a lot of different places. Sandy understands that our business is printing, not being the moral compass of the world, and they aggressively sought out more business, which upped our revenue line. I also hired Logan Stirling as a member of the Disposal and Reclamation team. I kind of stole Logan from Maxi Print, the company upstream from Smiley. Maxi is actually a bigger operation than Smiley but could also use some upgrading. Logan told me that Maxi got into trouble with the MPCA. Logan showed me the Schedule of Compliance from the MPCA, which I hadn’t seen and wasn’t aware of before. It looked like Maxi was dumping toxic chemicals into the Amarillo River well before I took over the job. They admitted to dumping chemicals into the water before, and there are chemicals in the water now. Seems pretty obvious to me.

Anyhow, Logan was very unhappy at Maxi and said people were blaming them for everything that wasn’t going right, which reminded me of my days at Maxi. Hey, Logan seemed like a nice enough person, knew some stuff about disposal and understood the importance of thinking forward and financial. In all, I hired an additional 26 people, some of whom were replacements of people who refused to move with the company’s bright new vision, bringing Smiley’s workforce up to 47, making Smiley Inc the second-largest employer in the area.

One big area where I knew we could make some big cost-efficient changes was in the Disposal and Reclamation area (“D & R”). I introduced the practice of packaging and reselling some of the byproducts of the inks we used. Yes, there is a market for them – to different types of printing firms and printer ink manufacturers. I also told the D & R team that they had to find ways to reduce disposal costs. One of the costliest byproducts to dispose of was Yellow #7, which contains Jaundithium, which costs about \$50 a barrel to dispose of. When I asked about how we could dispose of this more economically, I got “we can increase the way it’s always been done.” All I will swear to is that our costs dropped dramatically, our profits increased dramatically, and we increased our workforce by over 50%. What about *that* impact on the community??

Does some ink byproduct get into the local water system? Not any more than anything else people wash down a drain – I mean, there has to be some that gets washed down, same as always and same as when people dump their drugs down the toilet or solvents. No more than would be expected from normal flow and drainage use, and no more than was acceptable according to the Minnesota Pollution Control Agency (MPCA). This is borne out by the fact that Smiley was able to obtain permits to dispose of some of its wastewater into the Amarillo River and that any disposal was well within the limits set by the MPCA. Smiley stayed within those limits and passed every one of its inspection visits, as is shown in our Monitoring Reports. That is, we passed all inspections until that joker Payton Porter came along and came up with their preposterous monitoring results. **I circled the box in the Ground Water Monitoring Report, which I believe is Exhibit 10, and wrote in red ink “What”, “No way am I signing!!”, and LS! Don’t Post This”.**

Am I the cause of some of the strange stuff that has surfaced? C'mon!! Clearly Morgan has it in for me, as does their little spy Peyton Porter. Who, by the way, was a really crummy employee – took a LOT of breaks, was sneaking around, trying to get into restricted areas, and always seemed interested in everyone else's work but their own (now I know why). And what about Maxi Print, located upstream from Smiley? Heck, the amount of color printing they do is ginormous – they print all those color mailer ads that clog up everyone's mail. Even though Yellow #7 is the most used color at Smiley Inc (it's the basis for that corny smiley-face logo), Maxi has to use much more Yellow #7 than we do, right?

Before I get hauled off to jail, I would like to see some PROOF that me or Smiley Inc knew about or dumped more Yellow #7 than Maxi, or that we dumped so much as to have any measurable impact on the environment. Good luck with that – it doesn't exist.

This statement was given under oath. I have had an opportunity to read, review, and update this statement, and I attest that this is a true and accurate statement.

I am familiar with exhibits 2, 3, 5, 6, 7, 8, 9, 10, 11, and 12.

Dated: October 1, 2023 /s/ Raynie Smiley

STATE OF MINNESOTA)
) SS.
COUNTY OF CROW WING)

On this 1st day of October 2023, before me personally appeared Raynie Smiley, to me known to be the person described in and who executed the foregoing instrument and acknowledged that s/he/they executed the same as her/his/their free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Ogaa Ozaawadis
Notary Public – Notary Seal
STATE OF MINNESOTA
Crow Wing County
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/s/ Ogaa Ozaawadis
Notary Public
My Commission Expires:
12/31/2023

STATEMENT OF LOGAN STIRLING

My name is Logan Stirling. I am 29 years old, born on August 11, 1994. I was raised in Fishtown and have lived here all my life. I like doing stuff outside. Ever since high school me and my friends have spent our free time hunting and fishing and spending time out in the woods and on the river. We are always careful about the environment too, you know, leave no trace and all that, pack out your trash and don't bathe in the river. My cousin went to that fancy School of Environmental Studies in the Cities and is always talking to me about turning off the lights, taking shorter showers, avoiding single use plastics, recycling and reducing my "carbon footprint". I try to do all those things, besides they all save money too, so why not?

During and after high school I worked part time at the local gas station/bait shop on the edge of town for a few years but I decided I wanted to get into something that had more growth opportunity and so I got a job at Maxi Print, a large printing company upriver from Smiley, Inc. I started out on the janitorial staff, doing general cleaning around the printing plant, offices and bathrooms. The janitorial staff was not supposed to be involved in cleaning the printing presses or any of the cleaning process involving the ink. That was left to the "experts" in the Disposal and Reclamation ("D & R") department. They were the "experts" and had all the training. When I started in the janitorial job, I just got some minimal training about being really careful on the print press floor to not get any of the ink or solvents on my cleaning rags or mops and not put any rags with cleaning solvent or ink in my bins.

To be honest the janitorial job was really easy, and I got the job done really fast, faster than some of the older guys who had been there for a while and moved slower, you know. Because of that I would occasionally spend time messing around on my phone during my down time. The other guys didn't like that, and it caused some problems sometimes, I always got blamed for whatever went wrong in the department. Like one time when they found some ink press cleaning towels in the regular garbage bin and blamed it on me because "I am always in a hurry" and "going too fast" and "not paying attention to what I am doing". But it wasn't me, the other guys are careless, I have seen them picking up garbage around the print presses and not paying any attention to what they are doing. I have also seen them wiping up around the printing presses with their regular rags and not disposing of them in the special red cans.

Anyway, after a couple years in janitorial, I bid into the D & R department where we cleaned the presses and the used ink, ink byproducts and solvents used in the print press cleaning process were sent for disposal. I worked in D & R for several years before leaving to work for Smiley Inc. That department had some problems a year or so before I joined it, when the company was ~~fin~~ed-dinged for disposing of various toxic chemicals (not including jaundithium) into the drainage system. Every employee who was in the D & R Department received a copy of the Compliance Schedule issued by the Minnesota Pollution Control Agency to Maxi, and we were all expected to make sure Maxi complied with the remediation efforts. I guess that, after I left, the Compliance Schedule was in the stuff that I brought home. I discovered it after I started at Smiley and showed it to Rainie.

When I joined the D & R department, I received training about the proper way to clean ink, handling hazardous waste, and hazardous waste disposal. I watched some training videos and reviewed some pamphlets. Then I shadowed another D & R employee for a few days until I was ready to work on my own. Basically, you have to make sure that none of the ink or solvents are released into the environment, so you have to store everything in sealed containers all the time and not put anything with ink or used solvents on or in it into regular containers. That means you can't put anything in regular garbage cans. We use special red cans that seal shut, and we inspect them for damage so they cannot leak. And you can't overstuff any of the hazardous waste cans so that they won't seal, you know, common sense type things. We

also would try to reclaim or reuse some of the inks and some of the solvents and there was a process for that too. The inks and solvents we couldn't reuse, we would store and send out for disposal.

Getting the machines as clean as possible is important, both when changing out to a different color and even when just doing a regular maintenance clean. If the machines are not completely clean, they will use more ink, develop more clogs, and affect the accuracy and consistency of the color output. Also, a clean print press results in less downtime for unexpected repairs and less wear and tear so fewer replacement parts. At the same time, you don't want to use more solvent than necessary or be exposed to it any longer than necessary, so you need to work quickly and effectively. Most of the print presses at Maxi were self-cleaning, so the cleaning process was mainly refilling solvents and management of the discharge drums. Maxi did have a few older presses that had to be hand cleaned. With those machines you had to take the machine apart to get to the parts that needed cleaning and then scrub the parts real good with solvent to get off the ink build up.

I met Raynie Smiley while I was working in Maxi's D & R department. S/he/they had a lot of interesting and exciting ideas about ways to maximize ink processing, reclamation and lowering disposal costs but her/his/their job was eliminated after 6 months. Raynie called me about a year after s/he/they left Maxi and asked me if I was interested in coming over to work at Smiley, Inc. Raynie told me that s/he/they had updated Smiley's presses to new self-cleaning presses, and was going to implement some of the new ideas about using different types of inks and other ways of lowering disposal costs that would be friendlier to the environment, so I agreed to leave Maxi and join the D & R department at Smiley, Inc. I never felt like Maxi appreciated me and they seemed to feel the same about Raynie, so I figured we would probably get along well. And the pay raise Raynie offered didn't hurt either!

So, when I started at Smiley, Inc. on January 3, 2023, I had to go through even more training on hazardous waste disposal, specific training on all the inks Smiley uses, which ones are hazardous, which ones are not, how to dispose of the ones which are not hazardous, how to handle and dispose of the ones which are. Raynie and the supervisors in Smiley's D & R department are so strict about their procedures, it wouldn't have mattered if I had any prior training because I had to learn everything all over again. Raynie regularly comes through the department, is actively involved in our processes and is constantly checking in. Nothing happens in that department that escapes their notice. Smiley's D & R department is in a secure area and only those who were trained to handle hazardous waste are allowed access. Also, Smiley only moves hazardous waste around in the plant ~~on the evening~~ during the second shift ~~when fewer were working in the plant~~ to cut down on the number of people exposed and the possibility of inks and solvents migrating from their sealed containers to the environment by getting spilled, tracked, or wiped up by someone outside the D & R department. I have been happy working in Smiley's D & R department. I like working the Noon to 8 shift. I like being part of something important that is making a difference for the company.

Raynie and the supervisors at Smiley run a tight ship with an eye towards getting things done and keeping the company profitable. When I heard about this legal stuff I was really surprised. Raynie has made so many updates at Smiley and the company has grown so much, I think some people just don't like change and are looking to make trouble for Raynie so things can go back to the way things were.

This statement was given under oath. I have had an opportunity to read, review, and update this statement, and I attest that this is a true and accurate statement.

I am familiar with exhibit(s) 2, 3, 11, and 12.

98 Dated: October 1, 2023 /s/ Logan Stirling

99
100 STATE OF MINNESOTA)
101) SS.
102 COUNTY OF CROW WING)
103

104 On this 1st day of October 2023, before me personally appeared Logan Stirling, to me known to be the
105 person described in and who executed the foregoing instrument and acknowledged that s/he/they executed
106 the same as her/his/their free act and deed.
107

108 In testimony whereof, I have hereunto set my hand and affixed my official seal in the County and State
109 aforesaid, the day and year first above written.
110

111
112 Ogaa Ozaawadis
113 Notary Public – Notary Seal
114 STATE OF MINNESOTA
115 Crow Wing County
My Commission Expires: December 31, 2023
Commission #253-218-13

/s/ Ogaa Ozaawadis
Notary Public
My Commission Expires:
12/31/2023

EXHIBIT 1



**Smiley Inc
1969 Down By The River
Fishtown, MN, 56789
218-764-5390**

May 1, 2023

Minnesota Pollution Control Agency
520 Lafayette Road
St Paul, MN 55155

RE: Jaundithium in Fishtown's Water

To Whom It May Concern:

My name is Morgan Smiley. I'm a former longtime owner and operator of Smiley Inc in Fishtown, Minnesota. Smiley Inc is a print shop that uses Yellow Dye # 7, which contains Jaundithium. In fact, because of its logo, Smiley Inc uses quite a lot of Yellow Dye # 7—probably more than anyone.

One of my children—Raynie Smiley—has taken over Smiley Inc. Raynie is obsessed with money and has been cutting costs, possibly by cutting corners with the rules for disposing of the inky wastewater generated when cleaning the presses. There are old storm drains that run from Smiley Inc to the nearby river. Raynie knows about these storm drains (and even crawled through them as a child before I had the grates bolted down). In the local environmental news newsletter (which, ironically enough, is printed by Smiley Inc), I read about the fish that were discolored from exposure to Jaundithium in the river. I suspect that the cause is Raynie trying to save money by dumping inky wastewater down the storm drains.

It is with a heavy heart that I report my child Raynie as the likely polluter, and it sickens me to think of what Raynie appears to have done to the environment just to save a little money. Be assured that I will do whatever it takes to regain control of Smiley Inc and make things right again.

Sincerely,

Morgan Smiley

EXHIBIT 2



MPCA SCHEDULE OF COMPLIANCE

FILED PUBLICLY IN AGENCY RECORDS

**MAXI PRINT
2112 DYED ROAD N.
FISHTOWN, MN**

**SCHEDULE OF COMPLIANCE ("SOC"): 8675309
HAZARDOUS CONTAMINANTS FOUND PRESENT IN AREA**

AGENCY OBSERVATIONS:

ON JULY 20, 2020, AN ANONYMOUS REPORT WAS RECEIVED THAT THE RIVERWATER LOCATED DOWNSTREAM FROM MAXI PRINT LOCATED IN FISHTOWN, MN HAD A VISIBLE, OILY SHEEN. MPCA AGENTS TESTED THE AREA AND DISCOVERED THE PRESENCE OF POTENTIALLY HARMFUL CHEMICALS COMMONLY ASSOCIATED WITH INDUSTRIAL PRINTMAKING. THE AMOUNT PRESENT, HOWEVER, WAS DETERMINED TO BE NOT TOXIC. THE MPCA ISSUED A NOTICE OF VIOLATION TO MAXI PRINT.

MAXI PRINT CONCEDED THE TEST RESULTS AND ADMITTED TO UNKNOWINGLY RELEASING THE CONTAMINANTS INTO THE GROUNDWATER. ON SEPTEMBER 1, 2020, THE MPCA AND MAXI PRINT ENTERED INTO A VOLUNTARY SOC.

ON JANUARY 1, 2021, MAXI PRINT REPORTED SUBSTANTIAL COMPLIANCE WITHIN ACCEPTABLE INDUSTRY STANDARDS.

BECAUSE MAXI PRINT SUBSTANTIALLY AND VOLUNTARILY COMPLIED WITH THE TERMS OF THIS SOC, NO FINES WILL BE ASSESSED.

SOC CLOSED ON FEBRUARY 1, 2021

TESTING RESULTS:

REGULATED CHEMICALS	POTENTIAL ENVIRONMENTAL IMPACT	AMOUNT FOUND TEST DATE: August 1, 2020	AMOUNT FOUND TEST DATE: January 15, 2021
Verdanium	Green-ish hue, can seep into crops via roots and inhibit growth	5.1 ppt	2.1 ppt
Redant Phosphate	Red-ish hue, known to cause gastrointestinal illness when consumed in large amounts.	6.2 ppt	1.7 ppt

EXHIBIT 3

Yellow #7 Roller Printing Press



EXHIBIT 4

Walleye specimen pulled by DNR from J & M Walleye Fish Farm on April 10, 2023.



EXHIBIT 5

CURRICULUM VITAE Dr. Lane Lois, Ph.D. Qualified Independent Expert LaLo, LLC, Massachusetts

EDUCATION

Cornell University 2012-2018
Ph.D., Chemistry
Top 28% of class
Dissertation: *Use of heavy petroleum distillate in large-scale manufacturing inks*

University of Pennsylvania 2008-2012
B.S. in Chemistry, minor in History
Student government representative

PROFESSIONAL EXPERIENCE

Metropolis Chemical 2020-Current
Chemical Manufacturing Technician III

- Lead Researcher for ink manufacturing development
- Employ chromatography, spectroscopy, and spectrophotometry techniques
- Compound optimization
- Implemented new QC testing protocol
- Specialize in polymer synthesis

LaLo LLC 2020-Current
Qualified Independent Expert

- Provide qualified expert advice and testimony to ink manufacturing companies
- Perform qualitative and quantitative analysis of chemical solvents and compounds
- Analyze organic and inorganic compounds using techniques such as chromatography and spectrophotometry to determine properties, structure, reactions, and composition

Experienced Experts, LLC 2018-2020
Independent Expert

- Conduct forensic testing on factory-grade ink
- Process chemical samples for use in court cases and hearings

CERTIFICATIONS

Specialist in Chemistry (ASCP) 2019

Certified Chemical Technician (CCT) 2020

EXHIBIT 6

EXPERT DISCLOSURE OF PRIOR CASES *STATE OF MINNESOTA V. SMILEY INC* **DR. LANE LOIS, Ph.D.**

Case: *Dane Joe, et al. v. Fascinatink Manufacturing, et al.* (N. Dist. Indiana).

Trial Date: September 9, 2022

Substance of Testimony: Class action lawsuit by factory workers against employer-ink manufacturers for prolonged exposure to the toxic chemical, Benzene. Defendant manufactures retained me to test their paints, filling fountains, solvents, and varnishes for presence of Benzene. Total expert fees paid by clients: \$24,000

Case: *Smudge Mfg. v. Tool Worx, Inc.* (Dist. Massachusetts).

Trial Date: August, 2021

Substance of Testimony: Smudge Manufacturing manufactured unpatented ink and sold it to equipment manufacturers under exclusive purchasing contracts; Tool Worx developed ink with the same chemical composition and sold it to the clients at a decreased price. I was retained to analyze the chemical composition of the two inks. Total expert fees paid by client: \$13,000

Case: *Chemtrail Chemical v. Insolvent Solvents, inc.* (S. Dist. California)

Trial Date: February 2, 2021

Substance of Testimony: I was retained by Chemtrail Chemical in a patent infringement lawsuit against Insolvent Solvents. I tested and compared the companies' inks in question. Total expert fees paid by client: \$12,000.

Case: *State v. Wolfgang Beltracchi* (S. Dist. New York)

Trial Date: July 22, 2019

Substance of Testimony: I was retained by the State to provide an expert opinion on prosecution for art forgery. I discovered traces of modern pigments in 14 supposedly original paintings. Total expert fees paid by client: \$3,000.

Case: *Very Inkteresting, Mfg. v. Mr. Inkredible, LLC.* (Dist. Minnesota)

Trial Date: February 15, 2019

Substance of Testimony: I was retained by Inkredible in a patent infringement lawsuit against Very Inkteresting. I tested and compared the companies' inks in question. Total expert fees paid by client: \$6,000.

Case: *United States v. Jonathan Nathaniel* (Dist. Illinois)

Trial Date: June 5, 2018

Substance of Testimony: I was retained by defendant in criminal action for insider trading. I tested inks in particular entries on stock worksheets and compared them against other entries. Differences in the samples could have suggested the questioned entry was made on a separate occasion to cover violations. Total expert fees paid by client: \$6,000.

EXHIBIT 7

Amarillo River Testing Site and Results

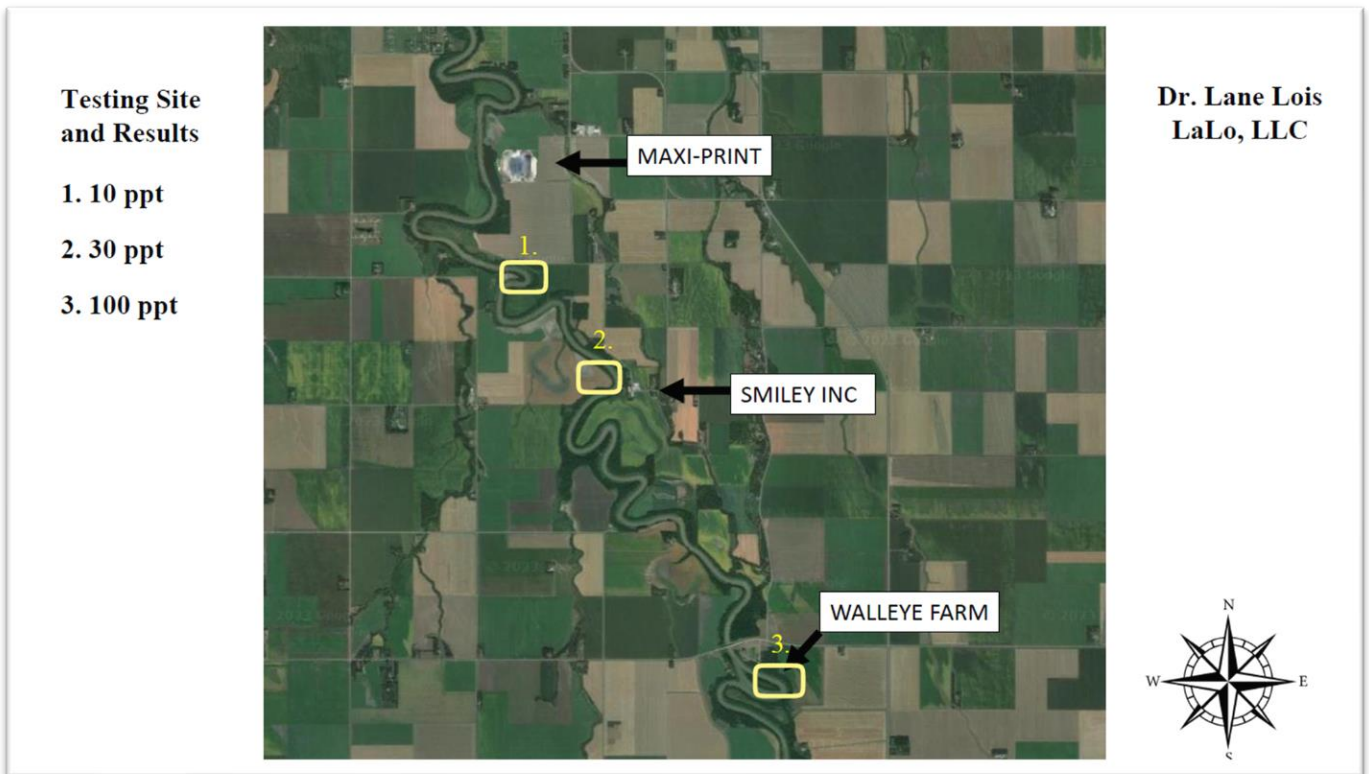


EXHIBIT 8 (1 of 2 pages)



520 Lafayette Road North
St. Paul, MN 55155-4194

Permit application checklist for industrial process wastewater

NPDES/SDS Permit Program

National Pollutant Discharge Elimination System (NPDES)/
State Disposal System (SDS)

Doc Type: Permit Application

Industrial process wastewater is wastewater which, during the manufacturing or processing, comes into direct contact with, or is left over from production of a raw material, intermediate product, finished product, byproduct or waste product.

This checklist is intended to help permit applicants determine the correct forms to submit as part of a complete permit application package. The Minnesota Pollution Control Agency (MPCA) will review the application materials for completeness and notify the applicant within 30 business days of receipt whether the application is incomplete or complete enough for processing.

MPCA use only
102731
Permit number
5/17/2017
Date received (mm/dd/yyyy)

Date Application Approved: 6/12/2017

Notes or Conditions on Permit:

Facility name: Smiley Inc (printing facility) Permit No.: MN102731

Reason for application (check all that apply): ☒ New permit ☐ Permit modification ☒ Permit reissuance
☐ Resubmittal of an application determined to be incomplete.
(Include copies of all returned forms with a resubmittal.)

Does this action include construction activities: ☐ Construction is proposed as part of the permit action.
☐ No construction is proposed as part of this permit action.

Form submittal

Submit one (1) hard copy of the permit application package, including the permit application fee. **The completed form is to be returned to:**

Attn: Fiscal Services – 6th floor
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Optional: If you know your assigned permit writer, please email the electronic permit application. For reference, permit writer assignments can be located on the MPCA website at: <https://www.pca.state.mn.us/business-with-us/wastewater-permit-writers>. The hard copy package is still required to be submitted to the address above.

Assistance

If you have any questions regarding the selection of the proper forms or how to complete the required information, contact the MPCA permit writer assigned to your facility.

You may also contact the MPCA at:

- In Metro Area 651-296-6300
- Outside Metro Area: 800-657-3864

Submit a question via the Ask MPCA online form: <https://www.pca.state.mn.us/about-mPCA/ask-mPCA-online-form>.

EXHIBIT 8 (2 of 2 pages)


Application forms selection (Check all boxes that apply and include the completed form with the submittal.)

Listed below are application forms and required submittals that may be required for a typical industrial wastewater treatment facility application. All required forms must be completed in-full and included with the submittal. The MPCA cannot process an application that does not include all of the required application forms. All forms, instructions, and additional information can be found on the MPCA website at <https://www.pca.state.mn.us/business-with-us/water-permits-and-regulations>.

Check all boxes that apply. Include a copy of all completed application forms with the submittal.

	For MPCA use only		
	Received	Incomplete	Complete
Required for all water quality permits <input type="checkbox"/> Transmittal form (wq-wwprm7-03) https://www.pca.state.mn.us/sites/default/files/wq-wwprm7-03.doc <input type="checkbox"/> Application Fee as specified on the Transmittal form <input type="checkbox"/> Certification Signature as specified on Transmittal form	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Required for all new permits and modifications with a change in design flow and/or loadings <input type="checkbox"/> Engineering and technical information for construction or expansion https://www.pca.state.mn.us/business-with-us/engineering-and-technical-information-for-construction-or-expansion <input type="checkbox"/> U.S. Environmental Protection Agency (EPA) Application Form 2D https://www.epa.gov/sites/production/files/2019-05/documents/form_2d_epa_form_3510-2d.pdf	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Major NPDES facilities and/or Categorical NPDES facilities <input type="checkbox"/> U.S. Environmental Protection Agency (EPA) Application Form 1 (10 pages of instructions, 16 pages total) https://www.epa.gov/sites/production/files/2019-05/documents/form_1_epa_form_3510-1.pdf <input type="checkbox"/> EPA Application Form 2C (5 pages of instructions, 25 pages total) https://www.epa.gov/sites/production/files/2020-04/documents/form_2c_epa_form_3510-2cr.pdf	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Discharge to surface water (for major and minor facilities) <input type="checkbox"/> Industrial surface water discharge of process wastewater application (wq-wwprm7-20) https://www.pca.state.mn.us/sites/default/files/wq-wwprm7-20.docx	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Discharge to land <input type="checkbox"/> Industrial land discharge of process wastewater (wq-wwprm7-21) https://www.pca.state.mn.us/sites/default/files/wq-wwprm7-21.docx <input type="checkbox"/> Industrial land application of industrial by-products application (wq-wwprm7-27)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Discharge to municipal wastewater treatment facility <input type="checkbox"/> Industrial pretreatment discharge to a municipal wastewater treatment facility application (wq-wwprm7-23) https://www.pca.state.mn.us/sites/default/files/wq-wwprm7-23.doc	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Treatment facilities using stabilization ponds <input type="checkbox"/> Municipal and industrial pond attachment (wq-wwprm7-11) https://www.pca.state.mn.us/sites/default/files/wq-wwprm7-11.doc	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stormwater management for wastewater treatment permit holders (sector coverage only) <input type="checkbox"/> Industrial Stormwater Multi-Sector NPDES/SDS Permit application (wq-wwprm7-60a) https://www.pca.state.mn.us/sites/default/files/wq-wwprm7-60a.docx Instructions for Industrial Stormwater Permit Application Attachment to NPDES/SDS Permit (wq-wwprm7-60b) https://www.pca.state.mn.us/sites/default/files/wq-wwprm7-60b.pdf NOTE: The MPCA has changed the way facilities certify as <i>No exposure</i> , permittees with an individual wastewater permit may no longer incorporate a no exposure certification/exclusion into a permit. Individual permittees that qualify for no exposure are required to obtain a no exposure certification through MPCA's e-Services system. Directions to acquire a No Exposure Exclusion can be found on the MPCA website at https://www.pca.state.mn.us/business-with-us/industrial-stormwater	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Additional attachments <input type="checkbox"/> Additional station location attachment (wq-wwprm7-49) https://www.pca.state.mn.us/sites/default/files/wq-wwprm7-49.doc <input type="checkbox"/> Additional chemical additives attachment (wq-wwprm7-48) https://www.pca.state.mn.us/sites/default/files/wq-wwprm7-48.doc	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

EXHIBIT 9 (1 of 4 pages)

 MINNESOTA POLLUTION CONTROL AGENCY 520 Lafayette Road North St. Paul, MN 55155-4194	Industrial surface water discharge of process wastewater application NPDES/SDS Permit Program <i>Doc. Type: Permit Application</i>
--	--

The National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) Permit Program regulates wastewater discharges to land and surface waters. This application applies to industrial facilities that discharge process wastewater to a surface water of the state. Any other discharge types will require a different permit application.

Complete the application by typing or printing in black ink. Attach additional sheets as necessary. For more information, please contact the Minnesota Pollution Control Agency (MPCA) at: In Metro Area: 651-296-6300 or Outside Metro Area: 800-657-3864.

- Review the application to ensure all requested items are submitted with this application.
- Please make a copy for your records.
- Refer to the Transmittal Form for mailing instructions.

Permittee name:	Smiley Inc	Permit number:	MN 102731
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Facility information

1.	Principal facility activity:	Printing
2.	Product(s) produced:	Printed materials on paper, cloth, other media
3.	Amount of product produced per Unit Time (such as tons/year, kilograms/day):	
	Average:	Maximum:
4.	Raw material(s) consumed:	Water, natural coloring ingredients
5.	Amount of product consumed per Unit Time (such as tons/year, kilograms/day):	
	Average:	Maximum:
	<i>*Provide both daily maximum and long-term monthly average expected during the five-year permit term. If an effluent limitation guideline applies and is expressed in terms of production (or other measure of operation) please report the expected actual production rates in the units used in the applicable effluent guideline. Consumptive use and/or production rates should be in sufficient detail to aid in the development of technology-based effluent limitations. For new discharges, actual production shall be estimated using projected production.</i>	
6.	Standard Industrial Classification (SIC) Code Number (list all that apply):	
	2579	
7.	If established, please indicate what you believe to be the applicable federal effluent limitation guideline(s) for your waste stream(s):	
	40CFR	
8.	What date did the facility initiate operation?	

Water supply

9.	What is the source of the intake water supply for the facility?	Rate of supply (gallons/day)
	<input type="checkbox"/> Municipal water supply, city name:	
	<input checked="" type="checkbox"/> Ground water, intake location:	Fishtown facility, Crow Wing County
	<input type="checkbox"/> Surface water, name:	6000 gallons/day
10.	If this is a surface or ground water intake, please provide the Minnesota Department of Natural Resources (DNR) Water Appropriation Permit Number:	141965

<https://www.pca.state.mn.us>
657-3864

Available in alternative [formats](#)
Page 1 of 4

651-296-6300
Use your preferred relay service

800-
657-3864

wq-wvpr7-20 10/11/22

EXHIBIT 9 (2 of 4 pages)

11	Is the intake water supply chlorinated or otherwise disinfected? <input type="checkbox"/> Yes <input type="checkbox"/> No
12	Is the intake water supply treated with a scale and/or corrosion inhibitor? <input type="checkbox"/> Yes <input type="checkbox"/> No

Wastewater treatment

13	How does the facility dispose of sewage (sanitary wastewater)? Drainage/sewage system
14	Does the facility generate process wastewater? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, the process wastewater from the facility is disposed of to: (check all that apply) <input type="checkbox"/> Municipal storm sewer <input type="checkbox"/> Land <input type="checkbox"/> Sanitary sewer <input type="checkbox"/> Surface water: <input type="checkbox"/> Stormwater retention basin or pond <input type="checkbox"/> Other (specify): <input type="checkbox"/> Septic tank/drainfield
15	Provide a complete description of the existing or proposed wastewater treatment system. For existing facilities, indicate what changes, if any, have occurred since the last permit was issued. Majority of wastewater is disposed of through waste reclamation vendor; 3% through drainage system
16	Completely describe the type, amount, and fate of all residual solids, sludge, silage, and by-products generated from facility operations and/or wastewater treatment. Smiley Inc uses Toxins R Us to remove wastewater for disposal
17	Identify the discharge rate in million gallons per day (MGD) and other information for each wastewater outfall discharge point:

Station ID/ Outfall number	Type of wastewater/waste streams	Discharge flow rate, average (MGD)	Maximum Daily Design flow rate (MGD)	Discharge flow rate, maximum (MGD)	Discharge frequency	Route to receiving waters

Maximum design daily flow: This is the design flow of the treatment system.

Maximum daily flow: This is the anticipated maximum daily flow rate for the next 5-year permit term.

Average daily flow: This is the anticipated average daily flow rate for the next 5-year permit term.

18	Attach a topographical map of the route of discharge to the receiving waters. If this is a discharge to a storm sewer, you must show the route of the storm sewer to a receiving water body. A map showing only the discharge to a storm sewer is unacceptable. The map must show how and where the facility's waste stream enters a receiving water body.
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Groundwater monitoring

19	Are there groundwater monitoring wells or lysimeters at your facility? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, describe where were installed and the reason they were installed:

EXHIBIT 9 (3 of 4 pages)

Chemical additives

20 List below all chemical additives that are approved for use at the facility. This includes the process reagents, flocculants, ~~detergents~~, corrosion inhibitors, biocides, wastewater treatment chemical additives, chlorine or other disinfectants, detergents, cleaning products, freeze conditioning agents, etc. MPCA approval is required for any additives that are new, increasing in usage, or not previously approved. Go to the MPCA chemical additive webpage at: <https://www.pca.state.mn.us/business-with-us/wastewater-permit-additional-guidance-and-information> to find the documents necessary to complete the approval process. Your additives will not be approved for use until you complete this process.

Product name	Purpose	Location in process of chemical addition	Frequency of addition	Type of application (slug dosing or continuous feed)	Average rate of use (weight or volume per day)	Maximum rate of use (weight or volume per day)	Date of approval (mm/dd/yyyy)
Solvent	Bind paint ingredients	Beginning	Every batch	Slug	2500 lbs	4500	5/23/2017
Rose Riveter Red Ink #2	Coloring	Middle	As needed for color	Slug	300 lbs	500 lbs	5/23/2017
Jaundithium Yellow Ink #7	Coloring	Middle	As needed for color	Slug	250 lbs	375 lbs	5/23/2017
Blues Bros Blue Ink #5	Coloring	Middle	As needed for color	Slug	300 lbs	425 lbs	5/23/2017

An Additional Chemical Additives attachment is available on the MPCA website at <https://www.pca.state.mn.us/business-with-us/wastewater-permit-forms> if more space is needed.

21. Do you use chemical dust suppressants at your facility? ☐ Yes ☒ No

If yes, fill out table below:

Product name	Location of use	Frequency of use	Average rate of use (weight or volume per day)	Maximum rate of use (weight or volume per day)

Attach the Material Safety Data Sheets, complete product labels and any other information on chemical composition, aquatic toxicity, human health, and environmental fate for each chemical dust suppressant. Chemical dust suppressants are approved separately from the process required in question 20.

Water quality sample results

22 Attach a list of all pollutants known or reasonably believed to be present at each facility discharge point and provide sample results for those pollutants.

Pollutants may include, but are not limited to, total suspended solids, biochemical oxygen demand, pH, fecal coliform, temperature (heat), nutrients (phosphorus, ammonia, nitrate, nitrite), metals, salts, cyanide, residual chlorine, fluoride, oil and grease, polychlorinated biphenyls, phenols, polynuclear aromatic hydrocarbons, volatile organic compounds, pesticides and/or radioactivity. Clearly indicate the date, location where sample was taken, types of wastewater sampled, and method(s) of sampling (e.g. grab, composite) for each sample.

At a minimum, sample results must be provided for total suspended solids (TSS), biochemical oxygen demand (BOD), fecal coliform (if believed present or sanitary wastes will be discharged), pH, and total phosphorus, irrespective of what might be required by an existing permit.

If this is an application for reissuance of an existing permit, review your existing NPDES/SDS permit to see if it has special testing requirements as part of the application for reissuance process.

EXHIBIT 9 (4 of 4 pages)

23	Certified laboratory analyzing samples: Abbey Road Chemical Analysis Services, Inc.
	Minnesota Department of Health Certification Number: 122137

Stormwater

24	Is the facility covered by an MPCA stormwater NPDES permit? <input type="checkbox"/> Yes <input type="checkbox"/> No
	If yes, indicate the permit number (if stormwater discharges are authorized under the stormwater general permit give unique identifying number rather than general permit number):
25	Does stormwater contact any raw or processed materials, finished products, industrial waste, byproducts, or any other type of materials at the facility? <input type="checkbox"/> Yes <input type="checkbox"/> No
	If yes, describe these materials:
26	Is any vehicle maintenance, transportation equipment cleaning, or airport deicing conducted at the facility? <input type="checkbox"/> Yes <input type="checkbox"/> No
27	Indicate where stormwater from the facility discharges to:
28	Summarize any treatment or best management practices that are used to regulate stormwater discharges at the facility:

Attachments

- ☐ **Pond Attachment:** If your facility has a pond treatment component (i.e., primary, secondary, aerated, polishing, cooling, etc.), complete the Pond Attachment.

EXHIBIT 10 (1 of 2 pages)



Minnesota Pollution Control Agency Minnesota Department of Public Safety GROUND WATER MONITORING REPORT

PART I GENERAL INFORMATION

(1) Facility Name Smiley Inc

Address 1969 Down by the River, Fishtown, MN 56289

Phone: 218-555-1055

(2) The GMS Identification Number 122137

DEP Permit Number 102731

(3) Type of Discharge Testing Solvents, inks

(4) Method of Discharge Toxic waste disposal service; facility claims no runoff into sewage or water system

Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Date: 5/27/2002

[Signature]
Signature of Owner or Authorized Representative

Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Date: 6-17-2008

[Signature]
Signature of Owner or Authorized Representative

Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Date: 8-14-2003

[Signature] our new 50-based ink!
Signature of Owner or Authorized Representative

Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Date: 6/19/2018

[Signature]
Signature of Owner or Authorized Representative

EXHIBIT 10 (2 of 2 pages)

PART II ANALYTICAL RESULTS

Facility GMS #: 122137

Test Site ID #: 102731

Classification of Ground Water: River/stream

Monitor/ Investigator	Analysis Date(s) & Time(s)	Parameter(s) Monitored	Analysis Method	Analysis Results/Units	Notes/Conclusions	Recommend further testing or investigation
Sam Weiler <i>[Signature]</i>	May 27, 2002	Parts per trillion (ppt) of: Solvents Red Ink #2 Blue Ink #5 Yellow Ink #7	Water Pro 3000 MPCA-approved sampling kits onsite testing	Solvent values < 5 ppt Ink values all < 5 ppt •Red Ink #2 •Blue Ink #5 •Yellow Ink #7	No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Review to determine if additional review needed
Sairey Gam <i>[Signature]</i>	June 17, 2008	Parts per trillion (ppt) of: Solvents Red Ink #2 Blue Ink #5 Yellow Ink #7	Water Pro 3000 MPCA-approved sampling kits onsite testing	Solvent values < 5 ppt Ink values < 5 ppt •Red Ink #2 = 2 ppt •Blue Ink #5 = < 1 ppt •Yellow Ink #7 = < 1 ppt	Nothing to report	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Review to determine if additional review needed
Therese Defarge <i>[Signature]</i>	July 14, 2013	Parts per trillion (ppt) of: Solvents Red Ink #2 Blue Ink #5 Yellow Ink #7	Water Pro 3000 MPCA-approved sampling kits onsite testing	Solvent values < 5 ppt Ink values < 5 ppt •Red Ink #2 = 2 ppt •Blue Ink #5 = < 1 ppt •Yellow Ink #7 = 1 ppt	Nothing to report	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Review to determine if additional review needed
Edwin Droad	June 9, 2018	Parts per trillion (ppt) of: Solvents Red Ink #2 Blue Ink #5 Yellow Ink #7	Water Meister MPCA-approved sampling kits onsite testing	Solvent values < 5 ppt Ink values •Red Ink #2 = 2 ppt •Blue Ink #5 •Yellow Ink #7	Supervisor note: Testing unfinished due to personal reasons. Mth 6/17/18 Note: Yellow Ink #7 contains Jaundithium which has been found to be toxic Mth 8/1/18	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Review to determine if additional review needed
Peyton Poyter <i>[Signature]</i>	May, 2023	Parts per trillion (ppt) of: Solvents Red Ink #2 Blue Ink #5 Yellow Ink #7	Water Meister MPCA-approved sampling kits onsite testing	Solvent values < 5 ppt Ink values < 5 ppt •Red Ink #2 = 2 ppt •Blue Ink #5 = 5 ppt •Yellow Ink #7 = 40 ppt	Sent for mass spectrometer testing	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Review to determine if additional investigation needed by enforcement agency

Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Date: _____

NO WAY AM I SIGNING!!
Signature of Owner or Authorized Representative

LS! - DON'T POST THIS

EXHIBIT 11

Amarillo River Topographic Map

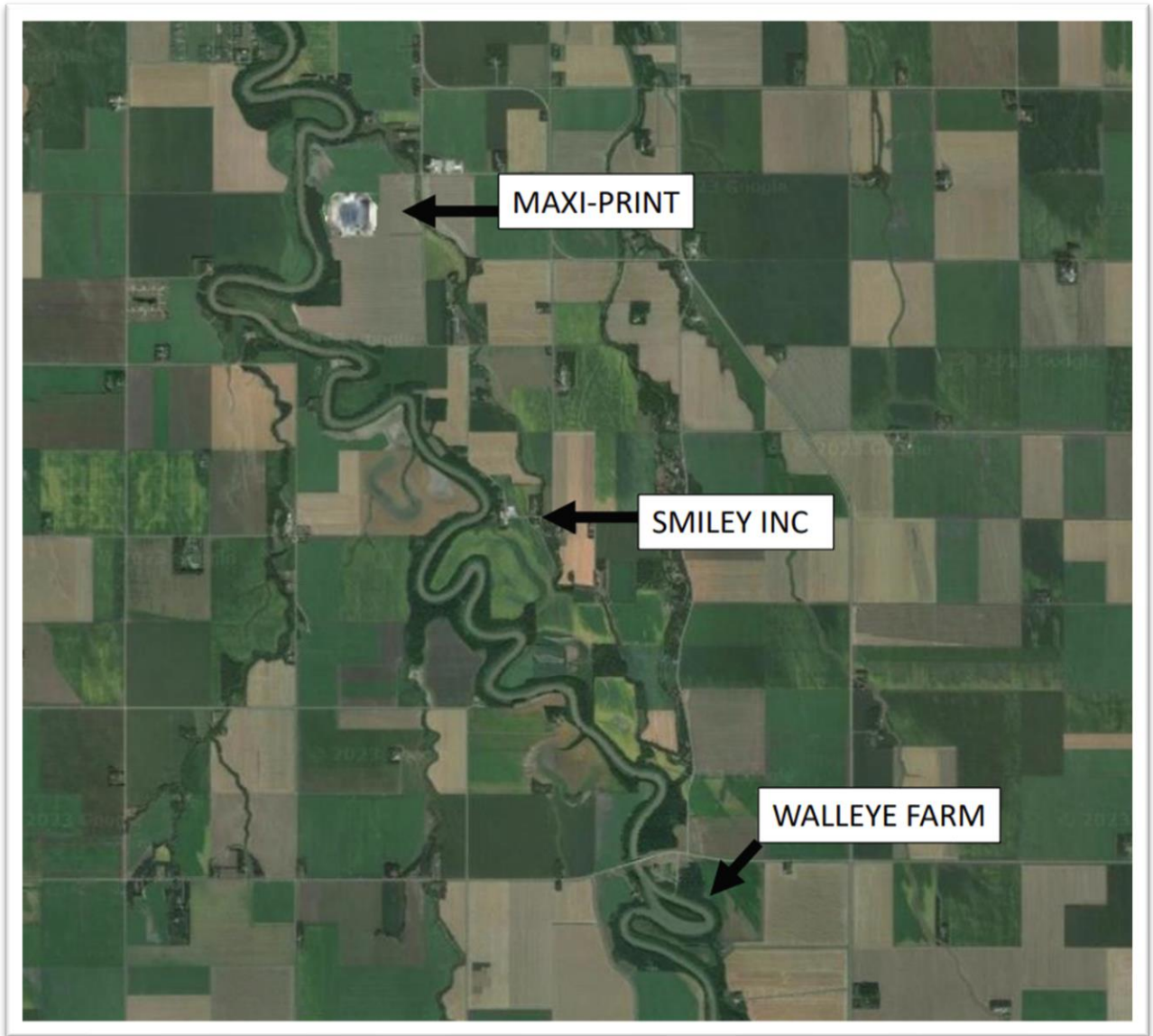


EXHIBIT 12

Toxins R Us Commercial Waste and Toxin Disposal

R.R. 66, Fishtown, MN 54570 218-555-DUMP toxinsrus@gmail.net



Monthly Summary of Disposal Pickups

Bill To: Smiley Inc

1969 Down by the River
Fishtown, MN 56789

Phone: 218-555-1055

Fax: 218-555-1056

Email: smileysmile@gmail.net

Customer # 3-456-2

GMS ID # 122137

Need copies of your daily or weekly pick-ups? Call or email us and we'll be happy to "dump" them on you!

Month/Year	Description	# of Barrels	Unit Price	10% Bulk Discount (>50 barrels)	Price
1/31/2022	Pick up wastewater for treatment/ disposal	63	\$ 75.00	\$ 472.50	\$ 4,252.50
2/28/2022	Pick up wastewater for treatment/ disposal	63	75.00	472.50	4,252.50
3/31/2022	Pick up wastewater for treatment/ disposal	64	75.00	488.00	4,386.00
4/30/2022	Pick up wastewater for treatment/ disposal	65	75.00	487.50	4,387.50
5/31/2022	Pick up wastewater for treatment/ disposal	67	75.00	502.50	4,522.50
6/30/2022	Pick up wastewater for treatment/ disposal	67	75.00	502.50	4,522.50
7/31/2022	Pick up wastewater for treatment/ disposal	66	75.00	495.00	4,455.00
8/31/2022	Pick up wastewater for treatment/ disposal	63	75.00	472.50	4,252.50
9/30/2022	Pick up wastewater for treatment/ disposal	67	75.00	502.50	4,522.50
10/31/2022	Pick up wastewater for treatment/ disposal	65	84.00	546.00	4,914.00
11/30/2022	Pick up wastewater for treatment/ disposal	61	84.00	512.40	4,611.60
12/31/2022	Pick up wastewater for treatment/ disposal	55	84.00	462.00	4,158.00
1/31/2023	Pick up wastewater for treatment/ disposal	49	84.00	\$ -	4,116.00
2/28/2023	Pick up wastewater for treatment/ disposal	45	84.00	-	3,780.00
3/31/2023	Pick up wastewater for treatment/ disposal	45	84.00	-	3,780.00
4/31/23	Pick up wastewater for treatment/ disposal	42	84.00	-	3,528.00
5/31/2023	Pick up wastewater for treatment/ disposal	41	84.00	-	3,444.00
6/30/2023	Pick up wastewater for treatment/ disposal	40	84.00	-	3,360.00

Thank you for your prompt payment each month!

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MINNESOTA HIGH SCHOOL MOCK TRIAL
COMPETITION RULES
2023-2024
Approved 10/11/2023

Any clarification of rules or case materials will be issued in writing to all participating teams no less than two weeks prior to the tournament.

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I. RULES OF THE COMPETITION

A. ADMINISTRATION

Rule 1.1 Rules

All trials will be governed by the Rules of the Minnesota High School Mock Trial Competition and the Minnesota High School Mock Trial Rules of Evidence.

Rules with the “NHSMTTC” designation appear in these rules only as notification to the team representing Minnesota at the National High School Mock Trial Championship (NHSMTTC) that additional and different rules govern that tournament. (See Rule 1.3 for an example.) This designation does not imply that rules governing the NHSMTTC govern this, the Minnesota Mock Trial Tournament, in any way.

Questions or interpretations of these rules are within the discretion of the Minnesota State Bar Association (MSBA), whose decision is final.

Rule 1.2 Code of Conduct

The rules of competition, as well as proper rules of courthouse and courtroom decorum and security, must be followed. Coaches, judges, spectators and students alike are expected to work with one another on a professional level at all times. The MSBA possesses discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct occurring while a team is participating in the mock trial program for flagrant rule violations or breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge or the mock trial program. In these rules, all references to “participating” includes any activity which is a part of the mock trial program in person or virtually.

Mock trial team coaches and other volunteers assisting a team need to be familiar with and comply with all relevant school rules regarding participation in co-curricular activities and interactions with students participating in such activities. Any communication between students and judges or other volunteers should take place within view of other adults or students.

Rule 1.3 Emergencies (NHSMTTC)

Rule 1.4 Student Timekeeper (NHSMTTC)

Rule 1.5. Relationship to Other Laws; Accommodation of Disability

These Rules will be interpreted and administered consistent with all applicable laws. Accordingly, should any applicable law require variance from these rules or accommodation of any competitor for any reason, including a legally recognized disability, that team member or their coach may apply to the Mock Trial Director for accommodation, and such reasonable accommodation as the law requires shall be granted. Where possible, teams competing against the team for which an accommodation was granted shall be informed of the accommodation in advance of a competition round but will ordinarily not be informed of the specific nature of the issue that led to the accommodation.

B. THE PROBLEM

Rule 2.1. The Problem

The problem will be a fictional fact pattern which may contain any or all of the following: statement of facts, pleadings, indictment, stipulations, witness statements/affidavits, jury instructions, orders/rulings exhibits, etc. Stipulations may not be disputed at trial. Witness statements/affidavits and exhibits may not be altered.

The problem shall consist of three witnesses per side, all of whom shall have names and characteristics which would allow them to be played by a student of any gender. All three of the witnesses must be called.

The fact that information is contained in a statement of facts, indictment, witness statement/affidavit, or exhibit does not mean that the information is admissible or has been admitted into evidence. Proffers of evidence through the testimony of witnesses must be made and ruled upon during the course of the trial itself.

Rule 2.2 Witnesses Bound by Their Materials; Rule Against Unfair Extrapolations

The Prohibition: Witnesses are bound by their Witness Materials and may not invent Material Facts that are not Reasonably Consistent with those materials. Such an invention is called an “Unfair Extrapolation.” Either a witness who unfairly extrapolates, or an attorney who invites a witness to unfairly extrapolate, are subject to having their score reduced at the scoring judges’ discretion.

Definitions:

“**Witness Materials**” includes the sworn affidavit or statement by the witness, as well as documents, reports or other exhibits prepared by the witness or relied upon by the witness. Normally it does not include affidavits or statements of other witnesses, unless the witness notes in their statement or affidavit that they relied on or considered other witness’ statement or affidavit.

“**Material Facts.**” If a fact stated in testimony by a witness does not, in the court’s discretion, appear to affect the strength, weakness or general outcome of a party’s case, then there has been no invention of a Material Fact, and no unfair extrapolation has occurred. For example, whether a witness testifies that they are a vegetarian probably does not affect the case unless vegetarianism is an issue in other parts of the fact pattern.

“**Reasonably Consistent.**” Facts stated in testimony by a witness which, in the court’s discretion, are Reasonably Consistent with the Witness Materials are not a violation of the rule. In assessing whether a witness’s testimony concerning a fact is Reasonably Consistent, the court should compare the testimony offered with the Witness Materials for purposes of consistency. The court should then consider whether the variation of the testimony from the facts stated in the Witness Materials is material or is instead minor or can be reasonably inferred from the Witness Materials.

Permitted Negative Inferences in Cross Examination: While an attorney is not to invite Unfair Extrapolation in their questioning of a witness, not all cross-examination questions that ask for testimony as to facts not clearly contained within the Witness Materials call for Unfair Extrapolation. A cross examining attorney may ask a witness questions about things not contained in the witness materials, if it is reasonable to have expected the witness to have included that information in their Witness Materials. For example, it is reasonable for a cross examining attorney to question a police officer witness as to the

officer's lack of expertise with forensic science by asking "*You don't have any special training in the examination of fingerprints, correct?*" if the Witness Materials do not have any mention of a such training.

Procedure: When an attorney assigned to examine or cross examine a witness believes that a witness has made an Unfair Extrapolation or believes that an attorney has invited a witness to make an Unfair Extrapolation, an objection under Rule 2.2 may be made. The presiding judge may permit the parties to argue application of the Rule to the issue and then make a ruling. To the extent a scoring judge does not agree with a ruling by the presiding judge as to whether an Unfair Extrapolation occurred or was requested to be made, such scoring judge may reflect that in the judge's scoring of the performance by the witness or attorney involved.

Intent of the Rule: Attorneys are encouraged, whenever feasible, to deal with Unfair Extrapolation by impeaching the offending witness rather than by objecting. It is not the intent of this rule to allow for extraneous or voluminous objection arguments about Unfair Extrapolation. Not every violation is intentional, and not every violation requires stopping the trial with an objection. Repeated, bad-faith objections under the Unfair Extrapolation Rule should not be rewarded. On the other hand, sometimes an objection may be required if an opponent's unfair extrapolation is tailored take advantage of time limitations or overwhelm the other team with factual inventions that cannot be cured through impeachment alone.

Rule 2.3 Knowledge of and Authenticity of Documents.

1. **Witnesses May Not Deny Knowledge or Authenticity.** If a witness's statement or report indicates that the witness is familiar with a document, the witness may not deny familiarity with, or the authenticity of, the document during trial.

2. **This Rule Does Not Supplant Evidence Rule 602.** Teams are required to meet the foundation elements of Evidence Rule 602.

3. **Remedy at Trial.** This rule should not be referenced at trial as a stipulation. Should the witness deny knowledge of the affidavit or other document, the crossing attorney should impeach. If the witness continues to deny knowledge the crossing attorney should reference this particular rule and ask the judge to instruct the witness to admit to the authenticity of the document.

Rule 2.4 Gender of Witnesses

All witnesses are intended to be gender neutral. Personal pronoun changes in witness statements indicating gender of the characters shall be deemed to have been made so as to conform to the gender or gender election of the student playing the witness. Any student may portray the role of any witness in accordance with the gender indicated in their team's roster and make use of the preferred pronoun announced by the student's team in their pretrial matters.

Rule 2.5 Voir Dire

Voir dire examination of a witness is not permitted.

C. TEAMS

Rule 3.1 School and Student Eligibility

The competition is open to students currently enrolled in grades seven through twelve in all Minnesota (and with approval of the Mock Trial Director, a non-Minnesota) schools. Program information and registration forms are mailed to appropriate school personnel at the beginning of the school year.

In circumstances in which a student's school does not participate in the Mock Trial Program, the Mock trial Director may authorize the student desiring to participate to:

- a. Participate on a different school's team;
- b. Participate on a team established by more than one school; or
- c. Participate on a team formed by a non-school organization (e.g., YMCA).

In approving such participation, it shall be for the purpose of increasing participation in the Mock Trial Program and not for competitive advantage.

To participate in the competition schools must return a completed entry form and registration fee for each team entered. Registration fees will not be refunded after October 27, 2023. **Registration forms and fees received after October 27, 2023 will not be guaranteed trials in the competition.**

A school may enter up to four teams in the competition. This limitation does not prevent a school from entering more than four teams in an invitational, scrimmage, or other event.

For schools with more students interested in participating than can be accommodated on the number of mock trial teams for which the school is eligible, there are various options:

- a. Hold tryouts for the mock trial team(s) and have the teacher coach (the attorney coach may also want to participate) select team members.
- b. Hold intraschool rounds to determine which students will represent the school in regional and state competition.
- c. Create "practice teams" comprised of less experienced members and allow only upper-class students to be on the school's "official" teams.

Schools must follow the MSBA procedures for confirming their trial schedules or be disqualified from entering the competition the following year.

Rule 3.2 Team Composition

Each team participating in a round is to consist of from six to **eight** primary members: three witnesses, three attorneys, and either student participating as a timekeeper and bailiff or a timekeeper and a bailiff. See Rule 4.1(A)4 for point deduction if a team has fewer than seven students to participate (three attorneys, three witnesses, with two of the witnesses acting as timekeeper/bailiff). There is no limit to the total number of students who can be members of the team and a student need not participate in the same role in each round.

Once a student has participated in a scoring role on a team, that student cannot participate on another team in a scoring role for the remainder of the season.

A scoring role is defined as an attorney or witness that receives a score during a round.

Every team must be fully prepared to argue both sides of the case. Only one team from each school may be eligible to compete at the state tournament.

Teams should be advised that the team representing Minnesota at the National High School Mock Trial Championship must be comprised of a sufficient number of 9-12th grade students to comply with NHSMTC Rules and that the team must comply with the requirements of Rule 5.9.

Rule 3.3 Team Presentation (NHSMTC)

Rule 3.4 Team Duties

During pretrial matters the prosecution/plaintiff team shall ask the Presiding Judge to accept the Pretrial Stipulations and grant the motions therein. There shall be three attorneys and three witnesses. Each of the three attorneys will conduct one direct examination and one cross-examination; one of the three attorneys will present the opening statement; another will present the closing argument and rebuttal. Any of the team's attorneys will handle the pretrial matters. [See Rule 4.5 for allocation of time]

The attorney who examines a particular witness on direct examination is the only attorney who may make the objections to the opposing attorney's questions during the cross-examination of that witness, and the attorney who will cross-examine a witness is the only one attorney permitted to make objections during the direct examination of that witness.

Each team must call each of the three witnesses. Witnesses must be called only by their own team during their case-in-chief and examined by both sides. Witnesses may not be recalled by either side.

Rule 3.5 Team Roster

Copies of a Team Roster must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams shall be identified by the side they are arguing and their school's name. Before beginning a trial, the teams must exchange copies of their Team Roster. The roster should identify the preferred gender of each witness so that references to such parties will be made using the correct pronoun. Copies of the Team Roster also should be given to the presiding and scoring judge before each round.

The Mock Trial Director may mandate a form of roster to be used.

Rule 3.6 Use of Technology

Teams may use electronic devices during rounds, including, but not limited to laptops and tablets, as long as these devices are not used to violate the rules on trial communication (see Rule 4.12) or any other competition or courthouse rules.

D. THE TRIAL

All trials will be governed by the "Simplified Rules of Evidence" contained in these materials. Other more complex rules may not be raised in the trial.

Rule 4.1 Courtroom Setting (2-5, Minnesota only)

1. The Plaintiff/Prosecution team shall be seated closest to the jury box. If a team wants to rearrange the courtroom, the teacher coach must ensure that the courtroom is returned to its original arrangement before the team leaves the courtroom at the end of the trial.
2. Coaches must sit so they are behind the student attorneys (i.e., coaches should not be visible to the attorneys during their presentations).
3. All participants are expected to display proper courtroom behavior. The following rules should be observed in the courtroom at all times:
 - a. Students should dress appropriately for a courtroom setting. (Suits are not required.) A student playing the part of a witness may wear clothing consistent with that witness' character but may not wear a costume. [Refer to Rule 4.11 for rule about costumes.]

- b. Be courteous and respectful to witnesses, other attorneys, and the judge.
 - c. Ask permission of the presiding judge to approach the judge or a witness unless otherwise instructed by the presiding judge.
 - d. If you receive a ruling against your side on a point or on the case, accept the decision gracefully.
4. All participants and spectators are expected to display proper behavior in the courthouse. The following rules should be observed in the courthouse at all times. Any violation of these rules (e.g., going into other parts of the courthouse) will be grounds for requesting that school to leave the courthouse.
- a. Each team must have an adult chaperone assigned to it while at the courthouse. The chaperone must remain with the team at all times, while the team is waiting for a trial to begin, competing in the courtroom, waiting for another team to finish competing, etc.
 - b. All students must stay in the area of the courthouse where the competition is being held. Students will be allowed to use the restrooms which are nearest to the courtroom being used for competition.
 - c. Teams should be advised that some courthouses prohibit cell phones on the premises. Courthouses do not have provisions to store them during trials and teams (including students, coaches and spectators) should be prepared to follow courthouse policy.
 - d. Students may not have in their possession any food, beverage or gum (except water) while in the courtroom.
 - e. Following completion of the trial, the coaches will inspect the area used for the competition, including the restrooms, to ensure that everything is left in the same condition in which it was found. *Any furniture in the courtroom that was moved before or during the trial **MUST** be restored to its original configuration!*
 - f. If requested to do so by the Court Administrator, the coaches will notify the administrator's office when their team arrives and when it leaves. The latter will provide an opportunity for the Court Administrator to arrange for an inspection of the area.
5. In order to avoid the appearance of impropriety or bias, coaches should not interact with the judges until after the trial.

Rule 4.1(A) Pretrial Matters (Minnesota only)

1. Teams are expected to be present in the courtroom fifteen minutes before the starting time of the trial. To assist in enforcing these rules, presiding judges, upon taking the bench before the start of the trial, will handle the following pre-trial matters:
- a. Ask each side if it is ready for trial. Ask if each side has provided each of the judges and the opposing team with a copy of its team roster (a sample roster is provided in the back of these rules). The Judge will then ask each team to introduce its members.
 - b. If video recorders are present, the judge will remind the teams that the tape cannot be shared with any other team. (See Rule 4.14 for more on videotaping.)
 - c. The judge will remind all present in the courtroom of the rule prohibiting verbal or written communication between the team members and the coaches, spectators or anyone else throughout the trial round, including any recesses. (This is to be especially stressed in crowded court settings where there is close proximity between audience and teams.) Communication is

allowed once the trial is complete. Judges should announce that the trial is complete, and communication is permitted.

- d. The judge will ask if there are any pretrial matters
2. The judge will remind all present that the courtroom should be put back in order, all trash removed, and that no food or drink is allowed anywhere, at any time, by anyone, with the exception of water for teams pursuant to Rule 4.1(D) and judges.
3. Each team should provide a copy of its roster to the judges and the opposing team which includes the names of the students, the roles they will play, and for the witnesses, the gender of the witness being portrayed. When requested to make introductions, each member of a team will rise, state their name and the role they are playing. When requested to by the judge to present any other pretrial matters, the plaintiff/prosecution team shall request the judge to accept the Pretrial Stipulations (See Rule 3.4 and the Pretrial Stipulations at the end of the case materials) and may then bring any additional matters before the court appropriate as pretrial matters (including any preferred pronoun with respect to their witnesses). Following that, the defense shall present any of its own pre-trial matters.
4. The starting time of any trial will not be delayed for longer than ten minutes, except with the agreement of the teacher coaches for both teams or as determined by the presiding judge. Teams may proceed with the trial by having one or more members play up to two roles when they have fewer than six members available subject to being assigned a two (2) point deduction by each judge for each missing attorney or witness.
5. All team members must remain in the courtroom during the entire trial. During a formal recess called by the judge, team members may leave the courtroom but should not communicate with anyone other than their student team members.

Rule 4.1(B) Rescheduling of Rounds (Minnesota only)

1. Once a trial has been scheduled, the trial will not be rescheduled due to the absence of a team member or illness, unless approved by the Mock Trial Director. Teams should include alternates to replace absent members. Cancellation and rescheduling of trials due to inclement weather conditions will be at the discretion of the Mock Trial Director (with particular attention to the distance teams may need to travel to reach their scheduled trial). While cancellation by a school of classes or after school activities will be considered by the Mock Trial Director, such cancellation does not prevent the assessment of a forfeit against the team not allowed by its school to participate in the event the Mock Trial Director deems the affected team as not having reasonably cooperated with efforts to reschedule the canceled trial.
2. The Mock Trial Director shall have broad discretion in the rescheduling of cancelled trial, including the reallocation of scheduled opponents and the use-of alternative venues for the trial and of holding of virtual trials as contemplated by Rule 4.1(C).

Rule 4.1(C) Establishment of Rounds to be Held Virtually (Minnesota only)

The Mock Trial Director shall have broad discretion to schedule trials to be held via video conferencing or by other on-line means. Such discretion will include the adoption of procedures and modifications to these Competition Rules to adapt them for application to a round being held virtually rather than in-person.

Rule 4.2 Stipulations

Stipulations shall be considered part of the record and already admitted into evidence.

Rule 4.3 Reading Into The Record Not Permitted

Stipulations, the indictment, or the Charge to the Jury will not be read into the record. While Stipulations are not to be *read into the record*, they are (See Rule 4.2) deemed to have been admitted and are considered part of the record.

Rule 4.4 Swearing of Witnesses

The following oath may be used before questioning begins:

“Do you promise that the testimony you are about to give will faithfully and truthfully conform to the facts and rules of the mock trial competition?”

Rule 4.5 Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)
2. Direct and Redirect (optional) Examination (25 minutes per side)
3. Cross and Re-cross (optional) Examination (18 minutes per side)
4. Preparation for closing argument (2 minutes)
5. Closing Argument and Rebuttal (7 minutes per side) (*up to three minutes of time not used by the prosecution/plaintiff attorney will automatically be reserved for rebuttal; however, a rebuttal is not required*).
6. Team Conference (2 minutes)

The Prosecution/Plaintiff gives the opening statement and the closing argument first.

Attorneys are not required to use the entire time allotted to each part of the trial. Time remaining in one part of the trial may not be transferred to another part of the trial.

If no time remains for a cross examination of a witness and the Court does not elect under Rule 4.7 to grant an extension of time for cross examination of the witness, no points shall be awarded to the attorney assigned to cross examine the witness and the witness who is not cross examined shall be awarded the same points as given for their direct examination.

The Presiding Judge shall have the discretion to permit a brief recess following the presentation of the Prosecution/Plaintiff's case and to add a reasonable time addition to the two minutes contemplated for the preparation of closing arguments. In particular, such additional time should be allowed to accommodate any health needs of a participant.

Rule 4.6 Timekeeping

Time limits are mandatory and will be enforced. Each team is required to have its own timekeeper and timekeeping aids. At a minimum, Timekeepers may use: 7:00; 6:00; 5:00; 4:00; 3:00; 2:00; 1:00; :45; :30; :15; STOP as the increments for their timecards but may use additional cards in full minute increments larger than 7:00. Teams are not permitted to use the cards to signal time remaining other than the aggregate time remaining for the team's direct or cross examinations, opening statement and closing argument (thus, a team may not use the cards to show time remaining for time the team has allocated to a particular segment of the trial).

Unless prohibited by the rules of the venue, electronic devices (including cellphones) may be used for timekeeping.

Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements.

Time does not stop for introduction of exhibits. If at any point during the trial time expires any timekeeper should say “stop” aloud for the court and parties to hear at the point of time expiration. Failure of a timekeeper to say “stop” aloud for the court and parties to hear will be considered a waiver of the time violation.

Every effort should be made to respect the time limits. Judges will be asked to use their scores to reflect a team's ability to adhere to the time guidelines. Perceived time violations are an issue which generates much controversy every year during the Mock Trial Competition. Due to the nature of the event and in the interest of keeping the competition good-spirited, teams are urged to adhere to the time limits indicated and to give their opponents the benefit of the doubt if minor infractions occur.

Upon completion of the examination of each of the first two witnesses for the Prosecution/Plaintiff and each of the two witnesses for the Defense, the Presiding Judge shall request the timekeepers to indicate the time remaining for the direct and cross examination. The Presiding Judge will establish the time remaining if there is a discrepancy in the times indicated by the two timekeepers.

Rule 4.7 Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the presiding judge should request that the student stop his/her presentation. Scoring judges shall determine individually whether or not to discount points in a category because of over-runs in time.

Rule 4.8 Motions Prohibited

Motions which defeat the purpose of the trials (such as those to dismiss or to sequester or motions in *limine*) will not be allowed.

Rule 4.9 Sequestration

Teams may not invoke the rule of sequestration. All witnesses are to be presumed to have been present during the trial and thus would have been present during testimony of all other witnesses.

Rule 4.10 No Bench Conferences

All matters should be handled in open court, without bench conferences.

Rule 4.11 Supplemental Material/Costuming/Exhibits

1. Limitation on Illustrative Methods and Items and Prohibition of Costuming. Teams may refer only to materials included in the case materials. Except as provided in subsection 6 below, no illustrative aids of any kind may be used, unless provided in the case materials. Absolutely no props or costumes are permitted unless authorized specifically in the case materials. Costuming is defined as hairstyles, clothing, accessories, and makeup which are case specific.

2. No Exhibit Notebooks or other Documents. The only documents which the teams may present to the presiding or scoring judges are the team roster forms and the individual exhibits as they are introduced into evidence. Exhibit notebooks are not to be provided.

3. Lamination and Page Sleeves may be used. Teams may, but are not required to, use lamination of or page sleeves for exhibits or other case materials. A laminated or sleeve protected document is to be in a clean condition prior to commencement of a round.

4. Enlargement of an Exhibit for Demonstrative Purposes. Teams may, but are not required to, enlarge one (1) exhibit to a maximum size of 24 by 36 inches. Such enlargement may be laminated. To use an enlargement of an exhibit for demonstrative purposes, such exhibit is to be first admitted into evidence before the request may be made to the Presiding Judge to use the enlargement for demonstrative purposes only.

5. Restrictions on Enhancement of Exhibits. There can be no other enhancement of the exhibits (e.g., color, additional words), but they can be mounted on poster board or foam core in order to allow them to be handled more easily. A team may use a marker, highlighter, or other device to mark up an admitted exhibit for demonstrative purposes. If the exhibit was supplied by the opposing team, such actions may not be destructive of the exhibit (a laminated enlarged exhibit, for example, could be subject to non-permanent marking that can be removed following the round).

6. During Closing Arguments. During closing arguments, a paper based flip chart with hand lettering or hand drawing may be used. Such flip chart may be prepared either prior to or during the trial. During closing arguments, an attorney may make use of admitted exhibits and the enlargement of an admitted exhibit used during testimony in their argument.

Rule 4.12 Trial Communication

Instructors, alternates and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any emergency recess which may occur. Signaling of time by the teams' timekeepers shall not be considered a violation of this rule.

Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar. Attorneys and witnesses may communicate with each other during the trial but may not signal witnesses on the stand. Attorneys may consult with each other at counsel table verbally or through the use of notes. During the permitted conference at the close of the trial regarding rules infractions, all team members (witnesses, attorneys, and bailiff and timekeeper) may communicate with each other. No disruptive communication is allowed.

Rule 4.13 Scouting and Viewing of Trials

Team members, alternates, attorney/coaches, teacher-sponsors and any other persons directly associated with a mock trial team, except for those authorized by the MSBA, are not allowed to view other teams' performances, so long as their team remains in the competition.

Everyone attending a trial should be reminded that appropriate courtroom decorum and behavior must be observed and that absolutely no food or drink is permitted in the courtroom.

Rule 4.14 Electronic Recording

Electronic recording, whether visual or audio, can be an effective teaching tool, but only a representative of a team competing in the trial may record the trial. A representative may record only upon motion made to the presiding judge, who shall grant the motion if:

1. Courthouse policy does not prohibit electronic recording.
2. There is no objection by the other team or any judge.

3. The recording does not distract the participants or otherwise disrupt the trial.
4. The recording will be used only by the team and will not be shared with any other team (even from the same school) or used for purposes of “scouting.”

Rule 4.15 Jury Trial

The case will be tried to a jury; opening statements and closing arguments are to be made to the jury. Teams shall address the scoring judges as the jury.

At the discretion of the judges, the scoring judge(s) (excluding the presiding judge) may sit in the jury box closest to the witness stand. If timekeepers, bailiffs or witnesses are present in the witness box, they should be seated in front of the scoring judge(s).

Rule 4.16 Standing During Trial

Unless excused by the judge, attorneys will stand while giving opening and closing statements, during direct and cross examinations, and for all objections.

Rule 4.17 Objections During Opening Statement/Closing Argument

No objections may be raised during opening statements or during closing arguments.

If a team believes an objection would have been proper during the opposing team’s opening statement or closing argument, one of its attorneys may, following the opening statement or closing argument, stand to be recognized by the judge and may say, “If I had been permitted to object during closing arguments, I would have objected to the opposing team’s statement that _____. ” The presiding judge will not rule on this “objection,” but all of the judges will weigh the “objection” individually and use their scores to reflect whether they believe a rules violation has occurred. A brief response by the opposing team will be heard under the presiding judge’s discretion.

Rule 4.18 Objections

The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge should ask the reason for it. Then the judge should allow the attorney who asked the question to explain why the objection should not be accepted (“sustained”) by the judge. The judge will then decide whether a rule of evidence has been violated (“objection sustained”), or whether to allow the question or answer to remain on the trial record (“objection overruled”).

1. Argumentative Question: An attorney shall not ask argumentative questions, i.e., one that asks the witness to agree to a conclusion drawn by the questioner without eliciting testimony as to new facts. The court, however, in its discretion, may allow limited use of argumentative questions on cross-exam.

2. Assuming Facts Not in Evidence: Attorneys may not ask a question that assumes unproved facts. However, an expert witness may be asked a question based upon stated assumptions, the truth of which is reasonably supported by evidence (sometimes called a “hypothetical question”).

3. Badgering the Witness: An attorney may not harass or continue to annoy/aggravate a witness.

4. Beyond the Scope: Refer to Rule 611(b); applies only to redirect & re-cross.

5. Character Evidence: Refer to Rule 608.

6. Hearsay: Refer to Mock Trial Rules of Evidence, Article VIII for an explanation of hearsay and the exceptions allowed for purposes of mock trial competition.

7. Irrelevant: Refer to Article IV.

8. Lack of Personal Knowledge: A witness may not testify on any matter of which the witness has no personal knowledge. (See Rule 602, Article VI)

9. Lack of Proper Predicate/Foundation: Attorneys shall lay a proper foundation prior to moving the admission of evidence. The basic idea is that before a witness can testify to anything important, it must be shown that the testimony rests on adequate foundation. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.

10. Lack of Qualification of the Witness as an Expert: See Rule 702.

11. Leading Question: Refer to Rule 611(c).

12. Non-Responsive Answer: A witness' answer is objectionable if it fails to respond to the question asked.

13. Opinion on Ultimate Issue: Refer to Rule 704.

14. Question Calling for Narrative or General Answer: Questions must be stated so as to call for a specific answer. (Example of improper question: "Tell us what you know about this case.")

15. Repetition: Questions designed to elicit the same testimony or evidence previously presented in its entirety are improper if merely offered as a repetition of the same testimony or evidence from the same or similar source.

16. Speculation: A witness' testimony should be based on the facts and issues of the case being argued. An attorney shall not ask a question which allows the witness to make suppositions based on hypothetical situations.

17. Unfair Extrapolation: Refer to explanation in Rule 2.2.

Note: Certain of the foregoing objections are not based on the Minnesota Mock Trial Competition Rules of Evidence and teams are not precluded from raising additional objections which may be available under such rules.

Rule 4.19 Witnesses are not to Waste Opponent's Cross Examination Time

Mock Trial involves a limited amount of time for completion of the questioning of the opposing team's witnesses. Accordingly, witnesses are to refrain from providing non-responsive or unduly narrative answers to properly phrased cross-examination questions. A witness may provide a brief responsive answer rather than a simple "yes" or "no" when appropriate and consistent with common trial practice.

The attorney conducting a cross examination of a witness the attorney believes is intentionally seeking to be non-responsive, should first seek to exercise control of the witness prior to seeking intervention by the presiding judge. If such efforts are not successful, the attorney may then request the presiding judge to direct the witness to refrain from violation of Rule 4.19. The presiding judge may rule in such manner as the presiding judge deems appropriate. This includes the allowance of additional cross examination time.

Rule 4.20 Procedure for Introduction of Exhibits

As an example, only, the following steps effectively introduce evidence:

1. All evidence will be pre-marked as exhibits.
2. Your Honor, let the record reflect I am showing Exhibit No. __ to opposing counsel.
3. Ask for permission to approach the witness. Give the exhibit to the witness.

4. "I now hand you what has been marked as Exhibit No. ___ for identification."
5. Ask the witness to identify the exhibit. "Would you identify it please?"
6. Witness answers with identification only.
7. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. ___ into evidence at this time. The authenticity of this exhibit has been stipulated."
8. Court: "Is there an objection?" (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)
9. Opposing Counsel: "No, your Honor", or "Yes, your Honor." If the response is "yes", the objection will be stated on the record. Court: "Is there any response to the objection?"
10. Court: "Exhibit No. ___ is/is not admitted."

Witness affidavits may be used to impeach or refresh recollection and when used for those purposes, need not be admitted into evidence.

Rule 4.21 Standards of Judging and Use of Notes

The standards for judging are contained in the MSBA Mock Trial Performance Rating Standards. Witnesses are not permitted to use notes while testifying during the trial; any use of notes is subject to an appropriate point deduction. Attorneys may use notes, but to the extent such as detracts from the overall performance, the scores may so reflect.

Rule 4.22 Redirect/Re-cross

Redirect and re-cross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Minnesota High School Mock Trial Rules of Evidence. Re-redirect and re-recross examination are not allowed.

Rule 4.23 Scope of Closing Arguments

Closing Arguments must be based on the actual evidence and testimony presented during the trial. Rebuttal shall not exceed the scope of the defense closing argument.

Rule 4.23.1 Team Conference (Minnesota Only)

At the conclusion of final arguments, the presiding judge will allow time (approximately two minutes) for the three student attorneys, three witnesses, bailiff and timekeeper to confer. The purpose of this team conference is to give the team members the opportunity to select the students from the opposing team they believed performed as the best attorney and the best witness and a chance to discuss among themselves whether they believe any significant rules violations occurred during the trial of which the judges could not be aware.

After the allotted time, the presiding judge will ask the teams to indicate their selection of best attorney and best witness. The presiding judge will then ask if either team wishes to report any significant rules violations. If a team feels point deductions should be assessed against the opposing team, one attorney from the team will have two minutes to explain why point deductions should be assessed. Following this explanation, one attorney from the opposing team will have two minutes to explain why point deductions should not be assessed. Further discussion will be limited to five minutes total, at which time the judges will decide individually about making any point deductions on their score sheets. The amount of such point

deductions, if any, is at the discretion of each individual judge. **These decisions (about point deductions) are final!**

Of course, the judges may, at their discretion, assess point deductions for a rule's violation regardless of whether the opposing team brings a rules violation to the attention of the judges. Further, if a judge believes the assertion of a rule's violation was made in bad faith or was completely without merit, the judge may assess a point deduction against the team making such assertion.

If the presiding judge fails to ask the teams if they wish to ask for point deductions, and one or both teams wish to do so, it must be brought to the attention of the judge at this time.

Rule 4.24 The Critique and Decisions

In the first four sub-regional rounds, the judging panel is allowed 10 minutes for a critique of the performances by the teams. The timekeeper will monitor the critique following the trial. Presiding judges are to limit critique sessions to a combined total of ten minutes. In the regional championship round, the judging panel will announce the team advancing to the state tournament and then offer, if the teams desire, a critique. No critique will be provided following rounds in the state tournament.

Judging shall be based on the quality of the teams' performances, i.e., the nature/success of the team's strategy, the students' level of preparedness, the individual student performances, etc. Judging shall not be based on the merits of the case. The total points awarded to each team by each judge will be added together; the team with the higher point total will be considered the winning team. **The team that wins on its performance is considered the winner of the trial for mock trial purposes.**

Rule 4.25 Offers of Proof

No offers of proof may be requested or tendered.

Rule 4.26 Reference to Witness Gender and Physical Traits

A witness is prohibited from making reference to the witness's own physical traits or gender, or reference to the other witnesses' physical traits or gender, where such information is not included in any witness statement. (For example, a witness cannot call attention to size to show inability to complete some physical act included in the case materials or state that the witness was treated differently because of the witness's gender.) An attorney is likewise prohibited from making argument pointing out physical traits of a witness not otherwise included in the case materials. Such references are unfair extrapolations. Teams are not prohibited, however, from raising issues about general or common human traits and abilities relevant to the case.

The team member playing the witness is allowed to act as though the team member has any condition, deformity, or disability described in the affidavits. Under no circumstances is the opposing team permitted to question the existence of such conditions based on the fact that the team member playing the witness does not actually have them. While the opposing team may cross examine the witness on the extent of the condition based on information provided in the affidavits, the opposing team may not challenge the witness to prove the existence of the condition by asking the team member to show the condition to the jury.

E. JUDGING AND TEAM ADVANCEMENT

Rule 5.1 Finality of Decisions

All decisions of the judging panel are **FINAL**. The only exception is when there is a computational error in the math on a judge's score sheet. In the event of a mathematical error, the trial will be awarded to the

team with the higher number of ACTUAL ballots or points as determined by the corrected math, even if this result is different than the one announced to the teams by the judge(s).

PLEASE NOTE: Many trial lawyers say that trial is an art and not a science. Thus, as beauty is in the eye of the beholder, trial performance may also lie in the eye of the beholder. This competition makes every effort possible to establish objective criteria by which student competitors are to be evaluated. However, it is a fact of life that not every attorney will evaluate a competitor the same. It is also true that not every juror will evaluate an attorney and his or her case the same. Thus trial competitions are very similar to real trials and the tournament could not progress without the selection of winners. We have therefore developed a rather detailed scoring process for the judges to use. Once the scoring process is complete, the decision of the judge(s) is final, as long as the team's scores have been added correctly.

It is also true that judges will often make different rulings on motions and objections during trial. That is true in real life as well. It is an inherent part of the trial system based on judges' discretion. Therefore, as in real life, the rulings of the trial judge are final, even if you disagree.

This competition is intended to not only teach students about how the legal system functions, but also to provoke thought about the issues involved. We encourage instructors to use this packet as a vehicle for education toward both goals.

Rule 5.2 Composition of Judging Panels (Minnesota only)

Every effort is made to have two volunteer judges for sub-regional trials and three judges for the regional finals. One judge will be designated to preside.

In a trial with two judges the presiding judge will also act as a scoring judge and complete a score sheet, and the team with the most total points wins the trial. If the total of the two judges' scores is a tie, the team with the most points on the presiding judge's score sheet wins the trial. Should a sub-regional trial have three judges, the presiding judge is encouraged to complete a score sheet for use in breaking a tie, but that score sheet is **not** to be counted for purposes of establishing the points awarded to the teams.

In a regional final trial with three judges the presiding judge will complete a score sheet. The team that wins at least two of the score sheets wins the regional final trial.

In a trial with only one judge, the winning team's points will be doubled.

Rule 5.3 Score Sheets/Ballots (NHSMTC)

Rule 5.4 Completion of Score Sheets

Score sheets are to be completed individually by each judge without consultation with the other judges. Each scoring judge shall record a number of points (1-10) for each presentation of the trial. At the end of the trial, each judge shall total the sum of each team's individual point and place this sum in the Column Totals box. The Mock Trial Director has the authority to correct any mathematical errors on score sheets. Mathematical errors not brought to the Director's attention within 24 hours of the trial are waived.

Rule 5.5 Contest Format/Team Advancement (Minnesota only)

In the Minnesota competition there are three phases: sub-regionals (Rounds 1, 2, 3, & 4), regional championship, and the state tournament.

Participation in Mock Trial Invitationals, camps and other non-MSBA Mock Trial related events is encouraged by the MSBA. The MSBA's Mock Trial website is available to serve as a place for such events to be publicized, however the MSBA and its Mock Trial program does not specifically endorse such events.

The MSBA encourages such events to include teams/individuals from schools across Minnesota and also encourages organizations hosting these events to establish subsidies to enable all teams/individuals who are interested in attending to do so.

Rule 5.5A Sub-Regional Competition

1. Assignment of Teams to Regions. For mock trial purposes, the state will be divided into regions. The exact number of teams assigned to regions will be determined by the number of teams entered in the competition and travel distances to the site of the competitions. Teams from the same school shall be assigned to the same regions. Teams in Greater Minnesota (the “Outstate Teams”) will be assigned to regions, subject to the discretion of the Mock Trial Director to establish one or more “Super” Outstate Region(s). Teams in the Minneapolis-St. Paul metropolitan area (the “Metro Teams”) will be assigned to compete at sub-regional competitions held either at the Hennepin County Courthouse (the “HCC Teams”) or the Ramsey County Courthouse (the “RCC Teams” and collectively with the Super Outstate Regional teams and the HCC Teams, the “Super Region Teams”) with teams from the same school to compete at the same region. The MSBA will allocate the number of regional championships to the super regions.

2. Subregional Trials. All teams shall compete in four sub-regional trials (Rounds 1, 2, 3, & 4). The MSBA will make every effort to avoid byes so that each team argues both sides of the case twice in the sub-regionals. The MSBA shall set the trial schedule and determine which teams compete against each other and the sides of the case assigned. The fact that a team has competed against another team will not preclude the same two teams from facing each other in competition and teams from the same school may compete against each other.

(a) The schedule for the first two rounds will be established and announced prior to the commencement of the sub-regionals.

(b) The final two rounds will be established and announced after the completion of the first two rounds.

(c) The pairings for the third round will involve use of procedures similar to those used in the power-matching after two rounds in the State Tournament under Rule 5C(5). As the paired teams will (subject to a team having had a win by bye or forfeit) have competed on both sides of the case, the assignment of sides will be done by coin flip under Rule 5.5D.

(d) The pairings for the fourth round will be based on the results after the first two rounds and involve:

- (1) Power-matching of 2/0 teams with 1/1 teams with the highest ranked 2/0 team assigned to face the lowest ranked 1/1 team;
- (2) 1/1 teams not paired to face a 2/0 team will be power matched against each other;
- (3) The teams are to be assigned to perform the side they did not perform in the third round; however, if the pairings do not permit both teams to switch sides, the MSBA may take the lower seeded team and exchange it with the next lower seeded team able to perform the side without repeating the side it was on in the third round and, in the event, such an exchange is not possible, the coin flip under Rule 5.5D will be used to determine which team repeats a side for the third time; and
- (4) 0/2 teams will again face other 0/2 teams with the focus on the team’s switching sides rather than any power-matching.

(e) If there is an odd number of teams sharing the same record, the Mock Trial Director shall have the authority to promote up or regulate down the highest or lowest ranked team (based on scoresheets won

and cumulative point differentials) to effect the pairings for the final two rounds. Further, the Mock Trial Director may pair 0/2 teams after the first two rounds to face another 0/2 team from a different region.

Rule 5.5B Regional Championship

After completion of the sub-regional competition, teams will be ranked based first upon win-loss record; second on scoresheets won; third based upon the cumulative point differential scores; fourth based upon cumulative points earned. [Note: A team's point differential score is the total point spread between that team's score and its opponent's score in a given trial. For example, if team A scores 95 points in a trial and its opponent, team B, scores 92 points, then team A will have an adjusted score of plus 3 and team B will have an adjusted score of minus 3.]

(a) For a non-super region, the teams ranked first and second after the sub-regionals will compete in a regional championship round. If two teams have the same record, the Mock trial Director shall flip a coin and if it is heads, the team earlier in the alphabet will be in the regional championship round.

(b) For teams in a super region, the teams will be paired to compete in a regional championship round with the number of teams to compete in each super region being twice the number of regional champions allocated under Rule 5.5A(1). Only one team from each school will be considered for purposes of pairings for regional championships, unless a school has multiple undefeated teams, in which case the two top teams from that school will qualify to compete in a regional championship, and they shall be assigned to face each other. Other regional championship pairings will be power matched.

(c) Sides for regional championships will be assigned in advance by a coin flip by an MSBA representative as provided in Rule 5.5D; however, teams with a 3-1 record will be assigned the side on which they *lost* in sub-regional rounds unless this would result in the same pairing/sides as a trial in a sub-regional round in which case the teams will switch sides (so, if it was Liberty Blue v. City Green in Round 2, and power-matching would result in the exact same pairing in regional championship, the teams would switch sides).

(d) If, prior to the regional championship round, an otherwise qualifying team is aware it will not be able to represent its region at the state tournament, it shall inform the Mock Trial Director of the scheduling conflict so that the next highest seeded team may compete for the privilege of participation in the state tournament.

Rule 5.5C State Tournament

1. Participation in State Tournament and Format. Each regional champion is eligible to attend the state tournament. If the team which won its regional championship round is unable to attend the state tournament, the regional champion will be deemed to be the team defeated in the regional championship and if such team is unable to attend the state tournament, the next highest ranked team from the region will be regional champion (for a Super Region, that will be based on the teams not already a regional champion). The state tournament format differs from that of the regional competition. There will be no selection by teams of the outstanding attorney and outstanding witness performance by members of the other team under Rule 4.23.1 and there will be no critique from the judging panel under Rule 4.24.

All teams at the state tournament will participate in at least three rounds of trials and will present each side of the case at least once. After each round of competition, a designee of the Mock Trial Advisory Committee will review the power-matching results and ensure that the trial pairings are correct. The power-matching system is subject to human error. The final results of power-matching cannot be appealed. The Mock Trial Advisory Committee has final authority to interpret these rules.

2. Judging Panel and Scoring. Every effort will be made to have three volunteer judges for each of the first three rounds of the State Tournament with one of the judges designated to preside. Each of the judges, including the scoring judge, will complete a score sheet. The team that wins two score sheets will be deemed the winning team of the round. If there are only two judges, the scoring judge's and presiding judge's scoresheet will be averaged to create a third scoresheet; if that averaged scoresheet results in a tie score, the team receiving the higher score on the presiding judge's scoresheet will be deemed the recipient of the higher score on the averaged scoresheet.

3. Pairings for First Round. Pairings for the first round will be assigned by a random method at the Coaches Meeting prior to round one.

4. Pairings for Second Round. After round one of the competition, teams will be divided into two brackets (1-0 and 0-1). Teams will be ranked within the brackets and power matched. Teams will switch sides in the second round from that they were assigned in round one if both teams can do so; if not, sides will be determined by coin flip by MSBA representative as soon as possible after pairings are established using the protocol in Rule 5.5D.

State Finals Power-matching criteria for the second and third rounds are: 1) Win/loss record (the team receiving the most winning scoresheets in a trial shall be deemed the winner of the trial regardless of the number of points earned by each team), 2) total number of scoresheets won, 3) cumulative point differential, 4) cumulative points earned.

5. Pairings for Third Round. After round two of the competition, teams will be divided into three brackets (2-0, 1-1, and 0-2). Teams will be ranked within the brackets and power matched. If a team has not performed a side of the case in the first two rounds, it will be assigned that side in round three, if both teams can do so; if not, sides will be determined by coin flip by MSBA representative as soon as possible after pairings are established using the protocol in Rule 5.5D.

6. Pairings for Championship Round. After three rounds of competition, final championship trial participants will be the two teams that are 3-0 and will compete in the final championship round. If both teams have performed different sides of the case twice in the three rounds of competition, each will be assigned the side they performed only once and if a team in the final championship round has not performed a side of the case in the first three rounds, it will be assigned that side in the championship round, if both teams can do so; if not, sides will be determined by coin flip in connection with the announcement of the final championship round teams using the protocol in Rule 5.5D.

7. Judging Panel for Championship Round. The judging panel for the championship round will consist of a presiding judge, who will not render a selection as to the winning team, and a panel consisting of an odd number of "scoring judges" who may each complete a scoring sheet that is the same as is used in the regional competition for determination of their selection of the winning team. The results of determination of winning teams by the members of the scoring panel and any score sheets any scoring judge elects to use from the championship round will be kept confidential.

8. Ranking of Teams in Tournament. Subject to the provisions of Rule 5.9 the state champion is then eligible to represent Minnesota at the annual National High School Mock Trial Championship, which is held in a different city each year. (2023 Little Rock, AR). Placement of the remaining fourteen teams competing in the state tournament will be based upon the following criteria: 1) Win/loss record, 2) Total number of scoresheets won, 3) Number of wins against 2-1 teams, 4) Number of wins against 1-2 teams, 5) Cumulative point differential. Provided that, if by application of the criteria a team is ranked higher than a team with the same win/loss record that defeated it, the losing team shall be placed immediately below the winning team.

Rule 5.5D Coin Flips:

For the purpose of allocation of sides to be determined by a coin flip, the coin will be flipped and if it is “heads”, the school with a name appearing earlier in the alphabet will be the plaintiff/prosecution and if the coin is “tails”, such school will be defense. For example, if River City Blue is facing River City Green, and the coin comes up “heads”, River City Blue will be assigned plaintiff/prosecution and River City Green will be assigned defense.

Rule 5.6 Power Matching/Seeding (NHSMTC Only; see Rule 5.5C for MN version)**Rule 5.7 Selection of Sides for Championship Round (NHSMTC Only; see Rule 5.5C(6) for MN version)****Rule 5.8 Effect of Bye Round**

A team that prevails by forfeit or receives a bye will be awarded a win and be credited with being deemed recipient of higher score on two scoresheets along with a cumulative point differential and cumulative points that equal the average (mean) cumulative point differential and average (mean) cumulative points of all regional rounds for the prior school year. A team that prevails by forfeit over another team from the same school will receive a cumulative point differential of zero and cumulative points of zero. [Note: for 2023-24, the cumulative point differential is 17 and the cumulative points are 208.]

Rule 5.9 Representing MN at the National High School Mock Trial Championship

NHSMTC Rule 3.1 requires teams competing at the National High School Mock Trial Championship to be comprised of students who participated on the current state championship team. If one or more participants on the team representing Minnesota at the National Championship is unable to compete, there may be opportunities under the NHSMTC Rules for the addition of students to the team.

If the state championship team desires to represent Minnesota at the National Championship, the members of the team and its coaches shall meet with individuals selected by the Mock Trial Director and of the Chair of the Advisory Committee (the “Nationals Advisory Sub-Committee”) within two weeks following the conclusion of the State Tournament to discuss the team’s roster of participants (which must comply with NHSMTC Rule 3.1) and the expectations and obligations associated with representing the Minnesota High School Mock Trial program at the National Championship. Such expectations and obligations involve preparing to compete and gaining familiarity with the rules of competition and evidence used at the National Championship on an expedited basis. Each of the team members and coaches will be expected to sign written acknowledgments of their understanding of the obligations and that they are committed to perform those obligations to the best of their abilities.

If as a result of such meeting, the Nationals Advisory Sub-Committee concludes the state championship team may lack sufficient members who can attend the National Championship and make the necessary commitments, the Sub-Committee may recommend to the Advisory Committee to find the state championship team unable to compete and, in compliance with NHSMTC Rule 3.1, designate an alternate team from the state competition to represent Minnesota.

The Team representing Minnesota shall be prepared by mid-April to conduct at least three scrimmages within the team or with teams from surrounding states with members of the National Advisory Sub-Committee in attendance for the provision of recommendations and suggestions.

F. DISPUTE RESOLUTION

Rule 6.1 Alleging a Rules Violation/Following a Conclusion of a Trial

In accordance with Rule 4.23.1, allegations of a violation of the rules must be brought to the attention of the presiding judge at the conclusion of the trial.

At no time in this process may coaches or other members of the team not participating in the round communicate or consult with the student participating in the round. Only student attorneys may invoke the dispute procedure.

Rule 6.2 Complaint/Grievance Process:

1. If unprofessional conduct, unethical behavior, or rules violation of a serious and substantial nature (collectively, “Serious Misconduct”) occurs outside of a trial, or occurs in a trial but could not reasonably have been identified and decided during trial (including pursuant to Rule 4.23.1), a grievance may be filed with the Mock Trial Director by any team member, teacher, attorney coach, judge, or member of the Mock Trial Advisory Committee. Serious Misconduct does not include decisions within a judge’s discretion, including, but not limited to, rulings on objections or points awarded. Concerns on matters on which a grievance cannot be filed shall be directed to the Mock Trial Director.
2. Grievances must be in writing, specific, and be submitted within 48 hours of the time the grievant knows or reasonably should have known of the Misconduct.
3. Grievances shall be responded to by the Mock Trial Director with involvement of members of the Rules Subcommittee of the Advisory Committee.
4. The response to the grievance may involve: (i) provision of a copy of the grievance to relevant parties, (ii) invitation for submission of written responses; and (iii) such additional investigation as is deemed appropriate.
5. The disposition of the grievance in order of increasing severity includes:
 - a. Dismissal of the grievance as unsupported or not involving a violation.
Determination that the grievance has merit but does not warrant the taking of any action.
 - b. With the approval of the Advisory Committee, issue a warning by private conversation with the offending parties.
 - c. With the approval of the Advisory Committee, issue a reprimand by letter to the offending parties. In the discretion of the Chair of the Advisory Committee the letter may be sent to other individuals, schools, or employers.
 - d. With the approval of the Advisory Committee, issue a suspension precluding individuals or teams from participation in mock trial for a specified time period.
 - e. With the approval of the Advisory Committee, issue a disqualification precluding individuals or teams from participation in mock trial for no less than one competition season.
6. The grievance process shall not involve any changing of the outcome of any trial or the calling for a retrial. The judges’ decision is final. See Rule 5.1.
7. All parties shall be notified of the Rules Subcommittee’s recommendation to the Advisory Committee. Any party may object to the recommendation in writing.
8. No legal or vested right is created by this process.

Rule 6.2.1 Unsolicited Communication between Coaches and Judges

Unsolicited communication between coaches and judges is strictly prohibited. Judges may file a grievance against a coach that s/he believes has violated this rule. The grievance must be filed within 48 hours of the alleged communication. The grievance process will be governed by the guidelines set forth in Rule 6.2 Complaint/Grievance.

Refer to Rule 4.23.1 for dealing with student team members' concerns about rules violation.

Rule 6.3 Effect of Violation on Score (NHSMTTC)

Rule 6.4 Reporting of Rules Violation/Outside the Bar (NHSMTTC)

G. COURTROOM ARTIST CONTEST

Rule 7.1 Registration and Eligibility

The Minnesota Courtroom artist champion will be eligible to represent Minnesota at the National High School Mock Trial Championship (the "NHSMTTC") and compete against participants from other states that include the courtroom artist competition as part of their High School Mock Trial program. In the event that the state champion is unable to attend, the Mock Trial Director has the sole discretion to designate a substitute artist, so long as the artist participated in Minnesota's courtroom artist contest during the current competition year.

Courtroom artists are subject to all relevant Minnesota High School Mock Trial Competition Rules, restrictions, and eligibility requirements and will be held to the Code of Conduct (see Rule 1.2). Artists from a school which has a team participating in the Minnesota High School Mock Trial competition are bound by Rule of Competition 4.13 and are deemed to be a member of their school's team for purposes of Rule of Competition 4.13. The courtroom artist may not serve in any other role on their school's Mock Trial team.

A team may register a student enrolled in their school to be their school's courtroom artist (registration of additional courtroom artists from the same school will be at the discretion of the Mock Trial Director). Such registration will be done in connection with team registration under Rule 3.1.

If a student's school does not participate in the Mock Trial Program, they may apply to the Mock Trial Director to be assigned to a team from another school that does not have a courtroom artist competing for it. In such circumstances the student will be responsible to arrange for travel to and from the in-person rounds the student selects for purposes of drawing a sketch of a round and the student or their parents may be required to sign consents to such participation by the student as the Mock Trial Director may require.

Rule 7.2 The Competition

Courtroom artists may submit to the Mock Trial Director their sketch from any regional round which the team they are assigned to competes. For in-person rounds, the sketch is to be provided to the presiding judge at the conclusion of the round. For rounds held on a virtual basis, the artist is to email an image of their sketch to the Mock Trial Director within 30 minutes of the conclusion of the round and may be requested to submit the original copy of the sketch to the Mock Trial Director. The winning sketch will be selected from those made during the first two rounds of the tournament.

Such sketches shall be evaluated by a judge or judging panel using criteria similar to that used in evaluation of the NHSMTC courtroom artist contest). From such submissions, not more than eight competitors will be eligible to participate in the Minnesota State High School Mock Trial State Tournament.

At the State Tournament, courtroom artists selected to compete will be assigned to attend the first and second round trials. The artist is to turn their sketch in to the presiding judge at the conclusion of each round. If a courtroom artist's team is competing at the State Tournament, they will be assigned to the rounds in which their team is competing. Courtroom artists assigned to a team that is not competing in the State Tournament will be assigned to sketch trials selected for them by the Mock Trial Director. Courtroom artists are to not communicate with members of teams other than those they are assigned to regarding what they observed of teams competing in rounds the artist observed.

Rule 7.2.A Trials/Trial Depiction – In-Person Competition

Sketches must depict actual courtroom scenes observed by the courtroom artist. Sketches are created and completed by the courtroom artist during the course of the round which is the subject of the sketch.

The presiding judge may allow courtroom artists to sit in the jury box; however, they shall not be seated in such a way that the scoring judges' scoresheets are visible to the artist.

Once the trial begins, the courtroom artist may not move about the courtroom. The courtroom sketch artists may not communicate, either verbally or non-verbally, with any member of the Mock Trial teams or any visitors, coach, or third party during the trial rounds.

Courtroom artists are responsible for ensuring their work area is left neat and orderly with all trash disposed in the appropriate trash receptacle and are to otherwise comply with Rule 4.1(4).

Rule 7.2.B Trials/Trial Depiction – Virtual Competition

The rules for trial depiction are the same as those during an in-person competition, except that:

1. Because there is no physical "courtroom" in a virtual competition, courtroom artists are permitted to create details of a courtroom setting in crafting their competition pieces.
2. Competing student attorneys may be drawn either standing or sitting, even if they were sitting during the virtual competition round.
3. It is not a violation of these rules for courtroom artists to depict a courtroom scene that they did not observe. If a template courtroom is provided by the Mock Trial Director for use in a Virtual Round, that courtroom must be used in the depiction.
4. All depictions of competing students and judges shall be accurate to the mode and manner of their dress and of traditional courtroom dress, even if the entirety of their clothing is not visible during the virtual competition.
5. Courtroom artists are advised not to focus too much on the courtroom background for their competition pieces. Competition piece judging will weigh more heavily the depiction of faces and bodies during a virtual competition.
6. Courtroom artists are permitted to use a similar access technology as the other participants and spectators use to participate or view a virtual competition are encouraged to explore ways to utilize the competition's chosen technical platform to make their art easier to create and more detailed. For example:

- a. Courtroom artists may wish to test whether a particular method of connection (e.g., using an app vs. a direct internet connection, using an app on an iPad vs. a laptop) provides the clearest views and best controls.
- b. Courtroom artists may wish to test using different views (such as a layout in which the video of the individual speaking will appear larger on the screen).
- c. Courtroom artists are permitted to experiment with these settings on their own systems during rounds 1 and 2, so that they may prepare to use those that prove most effective in Round 3.

Rule 7.3.A Submission Specifications – In-Person Competitions

Courtroom artists must supply their own materials and follow these parameters:

1. The art submission may be done in color or in black and white.
2. b. The drawing must be on paper of the dimensions 11” X 14”, in a horizontal/landscape format.
3. c. The drawing may be done in any of the following media: Color pencil, pen and ink, pastel, marker. No watercolors or paint are allowed.
4. The art submission must have the artist’s name and school placed on the back of the sketch; no signatures on the front of the submission are allowed.
5. The submission must be provided to the Presiding Judge for the Round upon conclusion of the Critique, if any.

Rule 7.3.B Submission Specifications – Virtual Competitions

The rules for submission of the artist’s work are the same as those during an in-person competition, except that:

1. The artist is to capture an image of their sketch.
2. Such image must be submitted within 30 minutes of the conclusion of the Round.
3. The submission process, labeling protocol, and technical specifications for courtroom artist depictions – maximum file size, minimum or maximum resolution, and image format (.jpg, .tiff, .pdf, etc.) – shall be announced in advance of the competition by the Mock Trial Director. In advance of the competition, artists are encouraged to explore options for high-resolution scanning or photography of their work. Courtroom artists shall maintain a digital copy and the actual sketch submitted until, at least, thirty days following the State Championship.

Rule 7.4 Judging Components

Sketches are evaluated and scored anonymously by a judge or judging team.

A sample judging scoresheet is posted to the NHSMTC website for information on how sketches are scored.

Rule 7.5 Release

All courtroom artist submissions become the property of the Minnesota State Bar Association and may be used for any purpose it deems appropriate, including but not limited to reproduction and dissemination, with recognition to the artist.

MINNESOTA MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

In American trials complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the evidence will probably be allowed by the judge. The burden is on the mock trial team to know the Minnesota High School Mock Trial Rules of Evidence and to be able to use them to protect their client and fairly limit the actions of opposing counsel and their witnesses.

For purposes of the mock trial competition, the Rules of Evidence have been modified and simplified. They are based on the Federal Rules of Evidence, and its numbering system. Where rule numbers or letters are skipped, those rules were not deemed applicable to mock trial procedure. Text in italics or underlined represent simplified or modified language.

Not all judges will interpret the Rules of Evidence (or procedure) the same way, and mock trial attorneys should be prepared to point out specific rules (quoting, if necessary) and to argue persuasively for the interpretation and application of the rule they think appropriate. The Mock Trial Rules of Competition and these Minnesota High School Mock Trial Rules of Evidence govern the Minnesota High School Mock Trial Program.

The fact that information is contained in a statement of facts, indictment, witness statement/affidavit, or exhibit does not mean that the information is admissible or has been admitted into evidence. Proffers of evidence must be made and ruled upon during the course of the trial itself.

Article I. General Provisions

Rule 101. Scope

These Minnesota High School Mock Trial Rules of Evidence govern the trial proceedings of the Minnesota High School Mock Trial Program.

Rule 102. Purpose and Construction

These Rules are intended to secure fairness in administration of the trials, eliminate unjust delay, and promote the laws of evidence so that the truth may be ascertained.

Article II. Judicial Notice

Rule 201. Judicial Notice

1. This rule governs only judicial notice of adjudicative facts.
2. A judicially noticed fact must be one not subject to reasonable dispute in that it is either
 - a. Generally known within the territorial jurisdiction of the trial court or

- b. Capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
- 3. A judge or court shall take judicial notice if requested by a party and supplied with the necessary information.
- 4. Judicial notice may be taken at any stage of the proceeding.
- 5. In a civil action or proceeding, the judge shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the judge shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

Article III. Reserved

Article IV. Relevancy and its Limits

Rule 401. Definition of “Relevant Evidence”

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

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

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, if it confuses the issues, if it is misleading, or if it causes undue delay, wastes time, or is a needless presentation of cumulative evidence.

Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(a) Character Evidence. Evidence of a person’s character or character trait, is not admissible to prove action regarding a particular occasion, except:

- (1) Character of accused -- Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;
- (2) Character of victim -- Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;
- (3) Character of witness -- Evidence of the character of a witness as provided in Rules 607-609.

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for

other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. Methods of Proving Character

(a) Reputation or opinion. In all cases where evidence of character or a character trait is admissible, proof may be made by testimony as to reputation or in the form of an opinion. On cross-examination, questions may be asked regarding relevant, specific conduct.

(b) Specific instances of conduct. In cases where character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

Rule 406. Habit; Routine Practice

Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Rule 407. Subsequent Remedial Measures

When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the 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, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408. Compromise and Offers to Compromise

(a) Prohibited uses. Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior consistent state or contradiction:

- (1) Furnishing or offering or promising to furnish—or accepting or offering or promising to accept—a valuable consideration in compromising or attempting to compromise the claim; and
- (2) Conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or agency in the exercise of regulatory, investigative, or enforcement authority.

(b) Permitted uses. This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness's bias or prejudice; negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or prosecution.

Rule 409. Payment of Medical or Similar Expenses

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

Rule 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements

Except as otherwise provided in this Rule, evidence of the following is not, in any civil or criminal proceeding, admissible against a defendant who made the plea or was a participant in the plea discussions:

1. A plea of guilty which was later withdrawn;
2. A plea of nolo contendere;
3. Any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or
4. Any statement made in the course of plea discussions made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty which is later withdrawn.

However, such a statement is admissible (a) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought, in fairness, be considered with it, or (b) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of witness.

Article V. Privileges**Rule 501. General Rule**

There are certain admissions and communications excluded from evidence on grounds of public policy. Among these are:

1. Communications between husband and wife;
2. Communications between attorney and client;
3. Communications among grand jurors;
4. Secrets of state; and
5. Communications between psychiatrist and patient.

Article VI. Witnesses**Rule 601. General Rule of Competency**

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless *the witness has personal knowledge of the matter*. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, related to opinion testimony by expert witnesses. (See Rule 2.2.)

Rule 607. Who may Impeach (i.e., show that a witness should not be believed)

The credibility of a witness may be attacked by any party, including the party calling the witness.

Rule 608. Evidence of Character and Conduct of Witness

(a) Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

- (1) The evidence may refer only to character for truthfulness or untruthfulness, and
- (2) Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.

(b) Specific instances of conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness

- (1) Concerning the witness' character for truthfulness or untruthfulness, or
- (2) Concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

Testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination with respect to matters related only to credibility.

Rule 609. Impeachment by Evidence of Conviction of Crime

(a) General Rule. For the purpose of attacking the credibility of a witness, evidence that a witness other than the accused has been convicted of a crime shall be admitted if elicited from the witness or established by public record during cross-examination, but only if the crime was punishable by death or imprisonment in excess of one year, and the Court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

(b) Time Limit. Evidence of a conviction under this Rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the Court determines that the value of the conviction substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

(c) Effect of pardon, annulment, or certificate of rehabilitation. Evidence of a conviction is not admissible if (1) the conviction has been the subject of a pardon or other equivalent procedure based on a finding of the rehabilitation of the person convicted of a subsequent crime which was punishable by death or

imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, other equivalent procedure based on a finding of innocence.

(d) Juvenile adjudications. Evidence of juvenile adjudications is generally not admissible but the court may, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

Rule 610. Religious Beliefs or Opinions

Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by Court. The Court shall exercise reasonable control over *questioning* of witnesses and presenting evidence so as to

1. Make the *questioning* and presentation effective for ascertaining the truth,
2. Avoid needless *use* of time, and
3. Protect witnesses from harassment or undue embarrassment.

(b) Scope of cross examination. The scope of cross examination shall *not* be limited to the scope of the direct examination, but may inquire into any relevant facts or matters contained in the witness' statement, including all reasonable inferences that can be drawn from those facts and matters, and may inquire into any omissions from the witness statement that are otherwise material & admissible.

(c) Leading questions. Leading questions should not be used on direct examination of a witness (except as may be necessary to develop the witness' testimony). Ordinarily, leading questions are permitted on cross examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used.

(d) Redirect/Re-cross. After cross examination, additional questions may be asked by the direct examining attorney, but questions must be limited to matters raised by the attorney on cross exam. Likewise, additional questions may be asked by the cross-examining attorney on re-cross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.

Rule 612. Writing Used to Refresh Memory

(a) Scope. This rule gives an adverse party certain options when a witness uses a writing to refresh memory:

- (1) while testifying; or
- (2) before testifying, if the court decides that justice requires the party to have those options.

(b) Adverse Party's Options. An adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony.

Rule 613. Prior Statements of Witnesses

Examining witness concerning prior statement. In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown, nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

Extrinsic evidence of prior inconsistent statement of witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate.

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are:

- (a) Rationally based on the perception of the witness and
- (b) Helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Rule 702. Testimony by Experts

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; and
- (b) the testimony is based on sufficient facts or data.

Note to Rule 702 – Previously, the Minnesota Rules contemplated under Rule 702.1 requesting the court to recognize a witness as an expert with respect to a specific field of expertise and thus able to render an opinion in that area of expertise. This is not a procedure under Minnesota's Rules of Civil or Criminal Procedure and thus the qualification requirement has been removed to avoid confusion by attorneys and judges who may be judging a round. There is, however, no change in the need to lay the foundation of the qualifications of the witness as an expert and for the witness to render an opinion due to their knowledge, skill, experience, or education. The opposing side should object on the basis of lack of foundation and/or Rule 702 if a witness seeks to provide opinion testimony outside their area of expertise as established in the questioning in the direct examination.

Rule 703. Basis of Opinion Testimony by Experts

The facts or data upon which an expert bases an opinion may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the field in forming opinions or inferences, the facts or data need not be admissible in evidence.

Rule 704. Opinion on Ultimate Issue

(a) Opinion or inference testimony otherwise admissible is not objectionable because it embraces an issue to be decided by the trier of fact.

(b) In a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused.

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefore without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may, in any event, be required to disclose the underlying facts or data on cross examination.

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

- (a) Statement: an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.
- (b) Declarant: a person who makes a statement.
- (c) Hearsay: a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.
- (d) A statement is *not* hearsay if:
 - (1) Prior statement by witness. -- The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is:
 - (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:
 - (i) 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
 - (ii) to rehabilitate the declarant's credibility as a witness when attacked on another ground; or
 - (C) identifies a person as someone the declarant perceived earlier.
 - (2) Admission by a party-opponent. -- The statement is offered against a party and is
 - (a) The party's own statement in either an individual or a representative capacity or
 - (b) A statement of which the party has manifested an adoption or belief in its truth, or
 - (c) A statement by a person authorized by the party to make a statement concerning the subject, or
 - (d) A statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or
 - (E) A statement by a co-conspirator of a party during the course in furtherance of the conspiracy.

Rule 802. Hearsay Rule

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

Example: Witness A testifies, "Some of the other tenants told me that Jones often failed to keep his apartments in good repair." This would not be admissible to prove that Jones often failed to keep his apartments in good repair, which was the matter asserted in the out-of-court statement. But, it might be

admissible to prove that A had some warning that Jones did not keep his apartments in good repair, if that were an issue in the case, since it would not then be offered for the truth of the matter asserted.

Comment: Why should the complicated and confusing condition be added that the out-of-court statement is only hearsay when “offered for the truth of the matter asserted?” The answer is clear when we look to the primary reasons for the exclusion of hearsay, which are the absence in hearsay testimony of the normal safeguards of oath, confrontation, and cross-examination which test the credibility and accuracy of the out-of-court speaker.

For example, if Ms. Jones testified in court, “My best friend, Ms. Smith, told me that Bill was driving 80 miles per hour” and that out-of-court statement was offered to prove the truth of the matter asserted (that Bill was driving 80 miles per hour), we would be interested in Smith’s credibility, i.e., her opportunity and capacity to observe, the accuracy of her reporting, and tendency to lie or tell the truth. The lack of an oath, confrontation, and cross-examination would make the admission into evidence of Smith’s assertion about Bill unfair to the opposing party. If the statement was offered, however, to show that Ms. Smith could speak English, then its value would hinge on Ms. Jones’ credibility (who is under oath, present, and subject to cross-examination) rather than Ms. Smith’s, and it would not be hearsay.

Another example: While on the stand, the witness says, “The salesperson told me that the car had never been involved in an accident.” This statement would not be hearsay if offered to prove that the salesman made such a representation to the witness. (The statement is not offered to prove the truth of the matter asserted.) If offered to prove that the car had never been in an accident, it would not be allowed because it would be hearsay.

Objections: “Objection. Counsel’s question is seeking a hearsay response,” or “Objection. The witness’ answer is based on hearsay. I ask that the statement be stricken from the record.”

Response to objection: “Your Honor, the testimony is not offered to prove the truth of the matter asserted, but only to show...”

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

1. **Present sense impression.** A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.
2. **Excited utterance.** A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.
3. **Then existing mental/emotional/physical conditions.** A statement of the declarant’s then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant’s will.
4. **Statements made for purposes of medical diagnosis or treatment.**
5. **Recorded Recollection.** A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness’ memory and to reflect that knowledge correctly.
6. **Records of regularly conducted activity.** A record of an act, event, condition, opinion, or diagnosis if:

- (a) the record was made at or near the time by – or from information transmitted by – someone with knowledge;
- (b) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
- (c) making the record was a regular practice of that activity;
- (d) all these conditions are shown by the testimony of the custodian or another qualified witness; and
- (e) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness

7. **Learned treatises.** To the extent called to the attention of an expert witness upon cross exam or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice.

8. **Reputation as to character.** Reputation of a person's character among associates or in the community.

9. **Judgment of previous conviction.** Evidence of a judgment finding a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment, but not including, when offered by the Government in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused.

Rule 804. Hearsay Exceptions; Declarant Unavailable

(a) **Definition of unavailability.** "Unavailability as a witness" includes situations in which the declarant

- 1. Is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
- 2. Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or
- 3. Testifies to a lack of memory of the subject matter of the declarant's statement; or
- 4. Can't be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
- 5. Is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b) (2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of preventing the witness from attending or testifying.

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

1. **Former testimony.** Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

2. Statement under belief of impending death. In a prosecution for homicide or in a civil proceeding, a statement made by a declarant while believing that his/her death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

3. Statement against interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

4. Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

5. Forfeiture by wrongdoing. A statement offered against a party that has engaged or acquiesced in wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness.

Rule 805. Hearsay within Hearsay: Hearsay included within hearsay is not excluded if each part of the combined statement conforms with an exception to the hearsay rule provided in these rules.

ARTICLE IX. Authentication and Identification - Not applicable.

ARTICLE X - Contents of Writing, Recordings and Photographs - Not applicable.

ARTICLE XI - Other

Rule 1103. Title

These rules may be known and cited as the Minnesota High School Mock Trial Rules of Evidence.

Any clarification of rules or case materials will be issued in writing to all participating teams no less than two weeks prior to the tournament.

Each team is responsible for the conduct of persons associated with the team throughout the mock trial competition.

PRETRIAL STIPULATIONS

Pursuant to Rule 3.4 of the Minnesota Mock Trial Rules, the following pretrial stipulation controls the mock trial competition. Recitation of these items is not scored.

- 1. Standard of Review.*** The parties jointly move the Court to judge this mock trial according to the mock trial standards, not the legal merits of the case.
- 2. Rating Standards.*** The parties jointly move the Court to use the evaluative criteria provided on the official mock trial score sheet. By these standards, scores below “4” are reserved for unprofessional conduct. A high score of “10” is reserved for superlative presentations.
- 3. Full Hearing of Evidentiary Objections and Argument.*** The parties jointly move the Court to allow each side to present all of its witnesses (unless the party’s time has expired) and to make and fully argue all objections. While objections to the foundation and relevance of testimony and exhibits should be made and fully argued, the parties jointly move the Court to apply a reasonably inclusive standard for admissibility.
- 4. Constructive Critique.*** The parties jointly advise the Court that, pursuant to Rule 4.24, the judging panel is allowed a combined total of ten minutes after the trial for constructive comments. It is recommended that each judge limit themselves to a maximum of three comments. The timekeeper will monitor the time following the trial.
- 5. Scoring the Use of Notes.*** The parties jointly advise the Court that, pursuant to Rule 4.21, the use of notes by attorneys is allowed, but to the extent such use detracts from the overall performance, the scores may reflect.
- 6. Mathematical Computation and Error Checking.*** The parties jointly move the Judges to use a calculator to check the score tabulation; double check each other’s math; and confirm that the Presiding Judge has filled in the tie-breaker box.
- 7. Unfair Extrapolations.*** The parties jointly advise the Court to take notice of Rule 2.2, as recently modified, including its definitions of “Witness Materials,” “Material Facts,” and “Reasonably Consistent.”

Presiding Judge: The parties’ stipulation is accepted, and the motions therein granted.

MSBA HIGH SCHOOL MOCK TRIAL VIRTUAL COMPETITION RULES

Pursuant to Rule 4.1(C) of the Minnesota High School Mock Trial Competition Rules (the “Competition Rules”), the following are the rules to be applied to the conducting of trials under on a virtual basis. In addition to these rules, the Mock Trial Director may distribute technical and process guidance to be complied with in connection with participation in a virtual trial.

Each of these rules is either a “VC Rule” or a “VC Modification to Rule ____.” The former are general rules with the latter being specific modifications to the Competition Rules to accommodate the virtual nature of the trial.

VC Rule 1 – Virtual Platform. The Mock Trial Director shall have discretion to establish the platform to be used to conduct competition on a virtual basis. Competitions scheduled to be held on a virtual basis may not be changed by the teams to be held in-person.

VC Rule 2 - Technical Difficulties During Trial

VC Rule 2.1 – Definition of Technical Difficulty. For purposes of this rule, technical difficulties include: (i) internet failure; or (ii) computer, device, camera or microphone failure. Provided, however, that failure of a camera only does not permit or require substitution under VC Rule 2.4 if the affected team member incurs only a failure of their camera or a loss of internet connection should the member be able to rejoin the trial using a telephonic connection.

VC Rule 2.11 – Consent to Recording: As the virtual platform selected for use may involve a recording function which may later be used by a team or the Minnesota High School Mock Trial program, every member of a team shall be required to sign a consent to their video image during a trial being recorded and potentially used for non-commercial purposes. If the member is under the age of 18 years, the consent shall be signed by the member’s parent or legal guardian.

The consent shall be in the form provided by the Mock Trial Director and shall be maintained by the team’s coach and provided to the Mock Trial Director upon request. The coach shall condition participation by a team member in the competition upon execution of such consent.

VC Rule 2.2 - Declaration of Recess by Presiding Judge. In the event of technical difficulties during a virtual trial, the Presiding Judge shall have discretion to declare a brief recess to permit efforts to resolve any technical difficulty substantially impairing participation by one or a limited number of participants in the trial. During any recess under this rule, whenever possible, the teams should remain logged into the virtual competition platform.

VC Rule 2.3 - Loss of Connection by Entire Team: In the event that a technical difficulty prevents an entire team from completing in part or all of a trial, the Presiding Judge shall declare a recess of up to 15 minutes, to allow that team to reconnect, either via video or by connecting on an audio-basis via telephone. If reconnection is not achieved during the recess, the Mock Trial Director may, in his or her sole discretion:

- (a) declare a forfeit in favor of the team that maintains its connection;
- (b) schedule the trial for completion; or
- (c) if at least four witnesses have been subject to cross-examination, deem the trial completed.

If the trial is scheduled for completion, the scores for the completed portions will be used with the continuation commencing at the point the last segment had been fully completed. There will be no need for use of the same judging panel in the continuation of the trial.

If the trial is deemed completed, the team that remained connected will be assigned scores of “10” for each segment not completed and the disconnected team will be assigned scores: (i) for attorney direct or cross examinations equal to the average of the attorney (as applicable) direct or cross examination scores completed by the team; (ii) for witness direct or cross examinations equal to the average of the witness (as applicable) direct or cross examination scores completed by the team; and (iii) for closing argument the score awarded to the team’s opening statement.

VC Rule 2.4 – Substitution of Team Member. If the technical difficulty relates to one or a limited number of members of a team and cannot be resolved within a reasonable, but brief, amount of time, then the trial will continue with another member of the impacted team substituting for the impacted team member. The substitute must be a member of the same team as the impacted participant and must be present the entire round in order to be substituted in. The substitute may be a team member already participating in the trial in a different role should no other member of the team be available. The two-point deduction under Rule 4.1(A) Paragraph 4 shall not apply to the substitution due to technical difficulties. The presentation will be scored based on the performance by the initial team member and the emergency substitute, taken as a whole.

VC Rule 2.5 – Announcing Substitution. In making a substitution due to technical difficulty, the impacted team must announce the substitution, by stating words to the effect of, “Your honor, before we proceed, I need to inform the court and the other team that [*provide name of substitute*] is substituting for [*provide name of attorney being substituted for or name of witness to be portrayed by substitute*], as the member of our team who was performing is unable to compete due to technical difficulties.” Teams shall advise the Mock Trial Director of any emergency substitution following the round of competition.

VC Rule 2.6 – Return of Participant Upon Resolution of Technical Difficulty. To minimize disruption, a team member playing the role of a witness who has been substituted for is not permitted to return and compete as that witness. If the substituted team member is an attorney, the substituted member may return and participate in his or her other roles (if any remain) as an attorney upon conclusion of: (i) the opening statement, if the technical difficulty arose during such statement; or (ii) upon conclusion of a witness examination (consisting of the direct, cross, any re-direct and any re-cross of a witness), if the technical difficulty arose during a witness examination. An announcement similar to that made under VC Rule 2.5 shall be made in connection with the return of a participant.

VC Rule 2.7 – Loss of Participation by a Timekeeper. In the event of a loss of connection for a timekeeper, that team shall defer to its opponent’s timekeeper for that trial segment. The team whose timekeeper lost connection may substitute another timekeeper for the remaining trial segments.

VC Rule 2.8 – Loss of Participation by Member of the Judging Panel. In the event of loss of connection for the Presiding Judge, a scoring judge shall serve as the presiding judge and may declare the recess contemplated by VC Rule 2.2. In the event of loss of connection for a scoring judge, the presiding judge

will call for a brief recess and assess whether the judging panel will be able to return in a reasonably short period of time. If the judging panel determines it can proceed without the return of a judge no longer connected, the trial should continue. If the judging panel determines it cannot proceed, the trial will be suspended, and VC Rule 2.9 will apply.

VC Rule 2.9 – Report of Technical Difficulties and Declaration of Retrial or Bye. The Mock Trial Director shall be advised of: (i) loss of connection by a team under VC Rule 2.3; (ii) substitutions under VC Rules 2.4 through 2.6; and (iii) suspension of trials under VC Rule 2.8. With respect to loss of connection by a team under VC Rule 2.3 the Mock Trial Directors shall have the discretion contemplated in such Rule. With respect to the suspension of a trial under VC Rule 2.8 the Mock Trial Directors shall have the discretion to declare the round to have been a Bye for each team or to reschedule the trial.

VC Rule 2.10 – Prohibition of False Claims of Technical Difficulties. No student or team may feign technical difficulty or invoke the technical difficulty rule for purposes other than a genuine technical difficulty. Such an act would violate the Code of Ethical Conduct set forth in Rule 1.2 of the Minnesota High School Mock Trial Competition Rules.

VC Rule 2.11 – Consent to Recording: As the virtual platform used may permit recording of the competition and such recording may later be used by a team or by the Minnesota High School Mock Trial program for non-commercial purposes, every member of a team must sign a consent to the recording of their participation in the competition and to the potential use of such recording. If a participant is under the age of 18 years, the consent must also be signed by the participant's parent or legal guardian. The consent shall be in the form provided by the Mock Trial Director and must be maintained by the team's coach and provided to the Mock Trial Director upon request. No student may participate in a competition unless the coach shall have the required consent from the student.

VC Modification to Rule 3.5 – Team Rosters

3.5(A) Confidential Team Roster. Teams shall prepare and update, as needed, a roster of the membership of their team which will include the email addresses for each participant on the Team. Such roster and updates are to be provided to the Mock Trial Director. The Mock Trial Director will maintain the confidentiality of such rosters and updates.

3.5(B) Team Roster for Trials. Teams shall prepare a complete roster of the membership of the team (including identification of members who may be asked to substitute under VC Rule 2.4) and submit it to the Mock Trial Director no later than three business days prior to the date of the trial for distribution to the judging panel and the opposing team. The roster shall include the cell phone number and email address of the coaches for the team, at least one of whom will be present via the virtual platform for the round. The team roster (including any changes in members participating in the trial) shall also be uploaded by the Coach in the Chat Box during Pre-Trial procedures.

VC Modification to Rule 4.1 – Use of Devices to Participate. If practicable, each participant should log into the virtual platform separately from a normal personal computer, tablet, cellular phone, or similar device, so that each of a participating attorney, witness, and timekeeper may utilize an individual device. If a team's attorneys or witnesses will be sharing a device, they are to update screen names when the device is to be used by a new participant. If announced by the Mock Trial Director, screen names, screen backgrounds, and similar protocol shall be used. Once the trial begins, only participants who are competing in a particular trial segment will have their camera turned on. All team members who are not actively

participating in that trial segment must have their cameras turned off, except for timekeepers turning on their cameras to display remaining time. For purposes of this rule, the witness, direct-examining attorney and cross-examining attorney must have their cameras turned on for the entire witness examination.

VC Modification to Rule 4.1(A) 1.a. – Identification of Participating Members of Team. After each team indicates it is ready for trial, the Presiding Judge will ask for each team to identify the roles to be played by the members listed on a team’s roster. If a role is to be played by a member not listed on the roster, the name (including the spelling) and the preferred pronoun of such member shall be provided.

VC Modification to Rule 4.4 – Swearing of Witnesses.

The Presiding Judge will indicate that all witnesses are deemed to be sworn.

VC Modification to Rule 4.6 – Timekeeper Communication.

Timekeepers are required to activate their camera to display time remaining cards during the portion of the competition in which: (i) their team is performing; (ii) the other team is performing and does not have a timekeeper; and (iii) at all other times directed to be done by the Presiding Judge.

After completion of the examination of each witness, timekeepers shall confer using the “chat” or similar feature regarding how much direct examination and cross examination time remains for each team. In the event of a disagreement, the timekeepers may alert the Presiding Judge of the issue and the Presiding Judge will determine the time remaining. If there is no disagreement, the timekeepers will post time remaining in the chatroom function of the virtual competition platform.

VC Modification to Rule 4.11 – Display of Exhibits. The screen sharing, or similar function of the virtual competition platform, shall be used to display exhibits (and witness statements during an impeachment of the witness for an inconsistent statement) and may be used in closing arguments.

VC Modification to Rule 4.12 – Trial Communication. The restrictions upon communication to members of a team participating in a trial by coaches, team members not participating in the trial, and observers under Rule 4.12 apply to a trial being held virtually. Only the team’s attorneys participating in the trial may have communication with one another during the round; provided the display by a team’s timekeeper as contemplated by VC Modification to Rules 4.1 or 4.6 are permitted.

The chat function of the virtual competition platform is not to be used except to: (1) display timekeeping messaging under VC Modification Rule 4.6; (2) upload the team roster; and (3) to communicate loss of audio and video functions.

VC Modification to Rule 4.14 – Electronic Recording

No team may record a competition without making a motion for the recording to the court in pretrial with no objection being made to such motion by the opposing team or any judge involved in the round. Any permitted recording may only be used by a team in accordance with Competition Rule 4.14’s restrictions on sharing of recordings.

VC Modification to Rule 4.16 – Standing During Trial. Attorneys may elect to stand or remain seated for all parts of the trial, except that objections shall be made while seated.

VC Modification to Rule 4.20 – Procedure for Introduction of Exhibits. The guidance under Rule 4.20 remains available subject to the following:

1. All witnesses shall have all case materials available and in their possession during their testimony but may only refer to them when prompted by an examining attorney.
2. Attorneys will not physically approach witnesses. Instead, attorneys will identify the exhibit they wish to show the witness and request the Court's permission for the witness to view it.
3. Attorneys will not be required to confirm that they have shown the exhibit to opposing counsel.
4. The attorney will say words to the effect of "I now show you what has been marked for identification as Exhibit No. _____. Would you identify it please?" Witness should answer to identification only.
5. When an exhibit – or, during impeachment or refreshment of recollection, some other document – is shown to a witness, a student member of the examining attorney's team shall make that document available to all participants via "screen sharing" or similar technology.
6. Exhibits or other documents posted in this manner will be deemed not to have been shown to the jury unless they are admitted into evidence.
7. Teams may use technology to mark exhibits electronically only to the extent that marking physical exhibits would be permitted by Rule 4.11

VC Modification to Rule 4.23 – Team Conference

In virtual trials, there will be awarding by teams of best attorney and best witness performances by the opposing team. Judges are to record on their electronic score sheet the members who have been selected by the opposing team as best attorneys or witnesses.

MSBA HIGH SCHOOL MOCK TRIAL VIRTUAL COMPETITION TIPS

I. TECHNICAL REQUIREMENTS:

1. Zoom will be the platform for virtual competitions. Downloading the app is highly recommended for the best quality and to reduce technical issues that may arise.
2. PC or laptop work the best. Tablets and cell phones are a last resort. As a precaution, it is recommended that you download the Zoom app to the device(s) you plan on using for your last-minute back-up (cell phone, tablet).
3. A wired connection is strongly recommended over a wi-fi connection.
4. Microphone and camera. A headset is the recommended option.

II. TIPS AND ADVICE:

1. **Whatever tech you're going to get, get it soon.** You want whatever tech you're going to use to be in your possession with plenty of time to test it and to practice with it prior to the start of the competition. You do not want to show up on the first day with a brand-new microphone or webcam that you've never tried before.
2. **Internet: A wired connection beats a wi-fi connection.** It's just that simple. If you can figure out a way to plug directly into your router (or the teams into the school's Ethernet port), then that is a better option than just relying on your wi-fi connection. ***This is the single most important thing you can do to improve your set-up for virtual trials.*** If your computer doesn't have an Ethernet port, you can get an Ethernet-to-USB converter (for less than \$30). If you absolutely have to use wi-fi, be as close to your router as possible, with nothing in between your computer and your router. As a last resort / back up option, download the Zoom app on your phone so that you could use cellular data to connect if need be. Practice and do test runs.
3. **Mic: Proximity matters more than tech.** A headset is the best and preferred option; however, you can use whatever mic you want. Of course, whatever mic you use, think about optics with the judges in the room. Also, internet and proximity to the mic are more important than mic quality. Whatever mic you choose to use, make sure you test it with another human on the other end before the competition begins. With many computers, if you use the built-in microphone, it will result in lower quality sound. Especially if the fan in their computer ends up running, and/or if they do any typing while they're microphone is on. None of this is the end of the world, but an external microphone, even a cheap one, will very likely improve quality. Practice and do test runs.
4. **Be aware of household bandwidth usage and potential tradeoffs.** Know who in your household is going to be doing what online. Try to have exclusive use of the internet in your home during your rounds in order to ensure the best connection possible. Close out of any unnecessary tabs during trial to reduce bandwidth use. Turning of VPN is something that a lot of people don't think of because it's "a security thing", but temporarily turning it off can significantly help improve internet speeds and the quality of connection. Practice and do test runs.
5. **Plan how you're going to communicate with your co-counsel during the trial.** You will need to communicate with your co-counsel during the round in which you are an advocate. This could be as simple

as texting, sending a private chat in Zoom, Google Hangout, etc. Practice which will work best for you and your teammates. Note: Refer to the online competition rules regarding communication using electronic devices or other methods.

6. Lighting: You want to be lit from the front. A bright light directly behind you will make it harder to see you. So, make sure that whatever is providing light in the room you are in is on your face and not on your back. Natural light from a window is great, but due to weather, time of day, etc., it is unreliable. Natural light is best used in tandem with electric light sources. Practice and do test runs.

7. Practice camera angles and your “look”. You should spend time practicing how the camera is set to optimize how you will look during the competition. If you plan to stand, will the camera show your face, or will we see your waist or the top of your head? If you are sitting, does the camera have a centered view of your face? Are there shadows? How is the lighting? Make sure that the angle on your camera is displaying the best possible view for the judges and your competitors. Practice and do test runs.

8. Green Screen/Image Backgrounds: MSBA may provide a background to use for all team members. If implemented, it will be mandatory for all competitions to ensure a uniform look.

9. Attire: All participant should be dressed in courtroom attire and look professional for the competitions. You may not intend on displaying yourself from below the waist, however, you could get up from your chair and the camera may show more than you expected. Be smart, be safe, and prevent embarrassment. Socks/Shoes are optional; go ahead and wear those comfy slippers or socks.

10. If in a classroom or group setting, make sure you test the angles of the camera, backgrounds, and seating placements of team members. Please refer to the VC Rules for further information.

SAMPLE TEAM ROSTER

Below is a suggested format for a roster sheet to be provided prior to the competition to MSBA for distribution to each of the judges. This sheet is for the judges' convenience in identifying the team members and the roles they will play. *Note: Alternate are required.

MINNESOTA MOCK TRIAL PROGRAM

School/Team: _____ SIDE: _____ DATE: _____

ATTORNEYS

Student _____

Opening, Direct of insert witness' name here, Cross of insert witness' name here

Student _____

Direct of _____, Cross of _____

Student _____

Direct of _____, Cross of _____, Closing

*Alternate, in the event of a technical error: _____

*Alternate, in the event of a technical error: _____

WITNESSES (in order of appearance)

_____ Witness #1 Name	_____ Student's Name	_____ Gender Pronoun
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_____ Witness #2 Name	_____ Student's Name	_____ Gender Pronoun
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_____ Witness #3 Name	_____ Student's Name	_____ Gender Pronoun
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*Alternate, in the event of a technical error: _____

*Alternate, in the event of a technical error: _____

Bailiff.....	_____ Student's Name	_____
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*Alternate, in the event of a technical error: _____

Timekeeper.....	_____ Student's Name	_____
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*Alternate, in the event of a technical error: _____



2023-24
Regional Competition
Round _____

Outstanding Attorney Certificate

Enter Name of Team Member

The Members of the _____ team,
who competed in the above referenced Round in the Minnesota High
School Mock Trial Competition, hereby confer upon the above-
named competitor recognition as the Outstanding Performing
Attorney for the _____ team this _____ day
of _____, 2024.



2023-24
Regional Competition
Round _____

Outstanding Witness Certificate

Enter Name of Team Member

The Members of the _____ team,
who competed in the above referenced Round in the Minnesota
High School Mock Trial Competition, hereby confer upon the
above-named competitor recognition as the Outstanding
Performing Witness for the _____ team
this _____ day of _____, 2024.

CONSENT TO RECORDING OF COMPETITION

Rounds of the Minnesota High School Mock Trial Competition (the “Competition”) may occur on a virtual basis through use of an internet-based platform by which participant’s images and voice will be shared with both teams participating in the competition and the judging panel. In connection with such a virtual competition the round may be recorded by the Mock Trial Program or by participants in the round.

Under the rules of the Competition, participants in the round may not: (i) make a recording of the round without permission of the other team and members of the judging panel; or (ii) use such recording other than for training of participants of that team (to the exclusion of other teams from the same school).

The Mock Trial Program may use recordings of rounds of the Competition for demonstrative purposes in connection with training of participants in the Competition and in efforts to promote awareness of the Competition. The Mock Trial Program will not use the recordings for commercial purposes.

As a condition to participate in the Competition, all participants (and their parent or guardian if participant is under the age of 18), must sign this consent, which will be maintained by the participant’s team.

.....

CONSENT

Participant’s Name: _____ and High School: _____

Participant’s Address: _____
(street address, city, state, zip code)

I/We hereby give permission for the above-named Participant’s participation in the Competition to be recorded and to the use of such recording as described above. I/We understand no prior notification of such uses will be provided and that such permission may result in the Participant’s image and voice being released into the public domain with no compensation being given for such use and release.

(Signature of Participant)

(Signature of Parent/Guardian – required if Participant is under the age of 18)

(Printed name of Parent/Guardian)

Date: _____, 202__

Date: _____, 202__



2024 MSBA Mock Trial Advisory Committee **Volunteer of the Year Award**

Each year hundreds of volunteer judges and lawyers across Minnesota devote time to the MSBA High School Mock Trial Program. Volunteers take on the roles of judges, coaches, and committee members. This award has been established to recognize volunteers who go above and beyond.

This Award's recipient has worked tirelessly to fulfill the goals of the program which include:

- 1) To develop a practical understanding of the way in which the American legal system functions.
- 2) To enhance cooperation and respect among educators, students, legal professionals, and the general community.
- 3) To help students increase basic life and leadership skills such as critical and creative thinking, effective communication, and analytical reasoning.
- 4) To heighten appreciation for academic studies and promote positive scholastic achievement.

If you know of a Mock Trial Volunteer worthy of this recognition, please nominate him/her/them to show your appreciation for their efforts. **This award will be presented at the High School Mock Trial Awards Banquet on March 8, 2024.**

Please describe in 300 words or less how the nominee named above has worked to fulfill the above-named goals of the MSBA High School Mock Trial Program.

Nominations will be accepted until February 9, 2024. Nominations should be submitted via e-mail or US mail to Kim Basting, Mock Trial Director at kbasting@mnbars.org or 600 Nicollet Mall, Suite 380, Minneapolis, MN 55402.