



2019 CASE

**Kelly Panenka
vs.
Rabona Foods**

CI 19-762237

Sponsored by the
Nebraska State Bar Foundation
and its State Center for Law-Related Education

www.nebarfnd.org/mock-trial

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NEBRASKA STATE BAR FOUNDATION

P.O. Box 95103
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402-475-1042

MEMO

TO: ALL MOCK TRIAL PARTICIPANTS

FROM: Doris J. Huffman, Executive Director

RE: 2019 Judge Lyle Strom High School Mock Trial Program

DATE: August 22, 2019

On behalf of the Nebraska State Bar Foundation, I welcome your participation in the 2019 Mock Trial competition! This year's civil case is a breach of contract case where Kelly Panenka's endorsement contract is terminated based on the Rabona Food's CEO's determination that Kelly breached the contract.

Students – You will experience what it is like to prepare for and present a case before a jury. Additionally, you will learn to evaluate information, respond quickly, and sharpen your public speaking skills.

The greatest benefit of Mock Trial is the opportunity to learn how the legal system works, and this knowledge will help you as an adult. By studying and understanding courtroom procedure, you should become more comfortable with federal and state laws as part of the legal system. Your interaction with some of Nebraska's finest attorneys and judges will provide you with a glimpse of the different interpretations of trial procedure and the different approaches of individual judges.

Teacher Coaches, Attorney Coaches and Judges – I strongly encourage you to focus on the goal of participation by students rather than stressing competition while preparing your case. Your contributions of time and talent are making experiential educational opportunities available to over 1,000 Nebraska students. Your participation is an essential element to the success of this program. You can be proud of the positive impact you have made on the lives of these students. Thank you so much!

Student News Reporters Contest – This educational component is available at both the regional and state level of the Mock Trial competition. Please see the Nebraska Broadcasters Association paragraph on the next page for additional information.

NOTE – *There have been changes to the Rules of the Competition. The Bar Foundation will hold several webinars to detail the changes.*

If you have any questions, please contact me at doris@nebarfnd.org.

Good luck and have fun!

ACKNOWLEDGEMENTS

Participation in the Judge Lyle Strom High School Mock Trial Program is completely voluntary. The Mock Trial Program is administered and funded by the **Nebraska State Bar Foundation**. Over 350 lawyers and judges volunteer each year for this educational program.

The Nebraska State Bar Foundation is a nonprofit corporation that was established in 1963. Its mission is *to serve the citizens of Nebraska and the legal profession through the administration and funding of innovative and creative programs directed toward the improvement of justice and the fulfillment of the American vision of equal justice for all.*

Annually, the NEBRASKA STATE BAR FOUNDATION and the NEBRASKA COUNCIL OF SCHOOL ATTORNEYS provide financial assistance for the winning Nebraska Mock Trial team to attend the National High School Mock Trial Championship.

A sincere thank you is extended to the Nebraska Council of School Attorneys. Beginning in 1992, this statewide organization has given \$1,000 annually to the winning State Champion. Since 2018, the Council increased its gift to \$2,000. The Council's continued support is a testament of the positive impact Mock Trial has on young Nebraskans.

A most sincere thank you is extended to The Honorable Lyle Strom for his continued leadership and invaluable input with the Mock Trial Program. The Foundation also appreciates the time and input from The Honorable John Gerrard and The Honorable Riko Bishop to the Case Committee.

A special thank you is also extended to the members of the Mock Trial Case Writing Committee for all their time and creative ideas that made this case "come to life":

Hon. Karen Flowers, Lincoln, Chair (ret.)
Stephanie Hupp, Lincoln, Vice Chair
Stan Beeder, Lincoln
Kristi Egger, Lincoln

Michael Gooch, Omaha
Hon. Tina Marroquin, Seward
Lory Pasold, Seward
Jon Urbom, Lincoln

The following organizations endorse the Nebraska High School Mock Trial Program:

Defense Counsel Association of Nebraska
Nebraska Association of School Boards
Nebraska Association of Trial Attorneys
Nebraska Council of School Attorneys
Nebraska County Attorneys Association

Nebraska County Judges Association
Nebraska Criminal Defense Attorneys Association
Nebraska District Judges Association
Nebraska State Bar Association
Nebraska State Council for the Social Studies

Nebraska Broadcasters Association – The Bar Foundation is most pleased to collaborate with the Nebraska Broadcasters Association to offer the student News Reporter Contest (SNRC) as an educational component of the Mock Trial program for students interested in a media career. **The SNRC** is available for teams at both the regional and state level, and any student participating is bound by the Code of Ethical Conduct. *The teams advancing to the State Championship may bring a student reporter to write a story about the first-round trial.* Students will have the opportunity to meet with a member of the judiciary and members of the media over lunch to visit about reporting on the trial (legal system).

MOCK TRIAL OATH

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?

CODE OF ETHICAL CONDUCT

The purpose of the Judge Lyle Strom High School Mock Trial Program is to deepen students' understanding and appreciation of the legal system through an experiential learning opportunity. One of the Mock Trial Program's goals is to educate students through a **respectful** and **civil competition**. Other goals are to strengthen speaking, listening, reading and reasoning skills and to promote cooperation between educators and lawyers. Mock Trial provides students an opportunity to compete academically with other students of diverse interests and abilities.

Per the Nebraska Rules of Competition, the Code of Ethical Conduct (CODE) must be followed:

- Team members (members), including a Student News Reporter, promise to compete with the highest standards of deportment, showing respect for their fellow team members, opponents, judges, evaluators, attorney coaches, teacher coaches and Mock Trial personnel. All competitors will focus on accepting defeat and success with dignity and restraint. Trials will be conducted honestly, fairly, and with the utmost civility. Members will avoid all tactics they know are wrong or in violation of the Rules, including the use of invention of facts. Members will not willfully violate the Rules of the Competition in spirit or in practice.
- Teacher Coaches agree to focus attention on the educational value of the Mock Trial Program. They shall discourage willful violations of the Rules. Coaches will instruct students as to proper procedure and decorum and will assist their students in understanding and abiding by the Rules of the Competition and this CODE.
- Attorney Coaches agree to uphold the highest standards of the legal profession and will zealously encourage fair play. They will promote conduct and decorum in accordance with the Rules of the Competition and this CODE. Attorney and Teacher Coaches are in a position of authority and thus serve as positive role models for students.
- Scouting by a team including a Student News Reporter, its teachers, attorneys or parents or by affiliates of any other team is not permitted. No information about any previous trials may be shared with any other team/school at either the regional or state competition.
- All participants (including observers) are bound by all sections of this CODE and agree to abide by the provisions. Teams are responsible for ensuring that all observers are aware of the CODE.

NEBRASKA MOCK TRIAL GOALS

- To increase student comprehension of the historical, ethical and philosophical bases of the American system of justice.
- To clarify operation of the law, court procedures and the legal system.
- To help students develop basic life and leadership skills, such as listening, speaking, writing, reading and analyzing.
- To build bridges of mutual cooperation, respect and support between the community (teachers, students, parents and schools) and the legal profession.
- To heighten appreciation for academic studies and promote positive scholastic achievements.
- To bring law to life for students through active participation in the program.
- To encourage participation and growth toward understanding the meaning of good citizenship in our democracy through the system of law. All students who participate are winners.
- To learn to lose a trial gracefully and accept defeat with dignity and restraint.

2019-2020 MOCK TRIAL COMPETITION TIMELINE AND DATES

Registration deadline	September 13, 2019
Payment and Dates & Times Preference Form deadline.....	September 25, 2019
Regional Competition	October 1 -
(8-week period in 12 regions)	November 22, 2019
Regional winners announced.....	November 25, 2019
State Championship	December 9-10, 2019
Lancaster County Court Justice and Law Enforcement Center	
Lincoln, NE	
Mock Trial Banquet	December 9, 2019
Lincoln, NE	
National Championship.....	May 6-9, 2020
Evansville, Indiana	

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

Kelly Panenka

CI 19-762237

Plaintiff

)

)

vs.

)

Rabona Foods

)

Complaint for Breach of Contract

Defendant.

)

Comes now Kelly Panenka and brings this Complaint against the Defendant, Rabona Foods, Inc., for breach of contract. In support of this complaint, Plaintiff alleges that on May 1, 2018, Plaintiff entered into and signed a legally binding written contract, a true and correct copy of which is attached to this complaint and incorporated herein. The contract was also signed by Frankie F. Flakke, CEO of Rabona Foods, Inc.

On June 20, 2018, Frankie F. Flakke, on behalf of Defendant, gave written notice that the contract was terminated.

Defendant refers to a public demonstration occurring on public property in which Plaintiff played no part. Plaintiff is accused of saying and not saying things after the product launch, when I had no obligation to speak. Plaintiff was perfectly civil throughout the product launch and thereafter. Plaintiff was whisked off the stage when the crowd became unruly. Plaintiff even wore the Rabona clothing I was told to wear. The product launch did not tend to bring me or Rabona into public contempt.

Plaintiff did nothing forbidden by the contract and did not fail to do anything required by the contract. Consequently, Rabona and its CEO Flakke violated the contract by terminating it without cause.

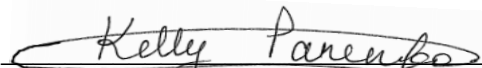
Defendant has refused to pay the agreed upon retainer of \$100,000.00. Plaintiff has been harmed by the unjustified termination of this contract and the failure of the Defendant to pay this amount.

WHEREFORE Plaintiff asks this Court to grant judgment to Plaintiff and against Defendant Rabona Foods, Inc., in the amount of \$100,000.00 with interest. Plaintiff asks this Court to order Defendant to pay costs, including expert witness fees and interest as provided by law.

Plaintiff asks for trial by jury.

Plaintiff asks that trial be scheduled in Wagon Wheel County, Nebraska.

Respectfully submitted,



Kelly L. Panenka, Plaintiff,

By: _____

Trenten E. Nash
Guenzel Mullin & Kresha
6241 South 14th Street
Goldenrod, NE 68508
402-475-1042
TEN@GMK.com
ATTORNEY'S FOR PLAINTIFF

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

Kelly Panenka

CI 19-762237

Plaintiff)

)

vs.)

Rabona Foods)

Answer

Defendant.)

Comes now Rabona Foods, Inc. and answers the complaint as follows:

1. Defendant admits a contract was signed by the parties on May 1, 2018.
2. Defendant admits that the contract attached to Plaintiff's Complaint is a true and correct copy of the contract.
3. Frankie F. Flakke, CEO of Rabona Foods, Inc. was authorized to and signed the contract on behalf of Rabona Foods, Inc.
4. On June 20, 2018, Frankie F. Flakke, on behalf of Defendant, gave written notice that the contract was terminated. This written notice is attached to this Answer and is incorporated herein by reference.
5. Defendant denies any other factual statement or claim made by Plaintiff except admissions against Plaintiff's interest.
6. Defendant alleges that the contract signed by the parties on May 1, 2018, was not valid because Plaintiff failed to disclose that s/he had previously been arrested for holding a public demonstration without a permit, littering, criminal mischief, and disturbing the peace. Said failure constitutes a material misrepresentation so as to void said contract.
7. Defendant alleges that Rabona Foods, Inc., consistent with the requirements of the contract, determined that on the June 16, 2018, Plaintiff and associates of Plaintiff engaged in a public demonstration which was intended to and did bring Plaintiff into disrepute, contempt, scandal, or ridicule or which tended to shock, insult, or offend the majority of the potential consumers of Rabona Foods' products, and especially of BreakFast or which tended to adversely affect or reflect on Rabona Foods.
8. Participants in this demonstration engaged in conduct of a shocking and offensive nature.
9. Plaintiff breached the contract and is therefore entitled to no remuneration.

WHEREFORE Defendant seeks judgment in its favor and for Plaintiff to take nothing. Defendant asks this Court to order Plaintiff to pay costs. Defendant concurs in the request for trial by jury. Defendant concurs that trial should be held in Wagon Wheel County, Nebraska.

Respectfully submitted,

Rabona Foods, Inc., Defendant

By: _____

Maggie C. Monahan
Seglin Allen Johnson & Gotch
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Goldenrod, NE 68509
402-475-7106
Maggie@sajglawyers.com
ATTORNEY'S FOR DEFENDANT

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

Kelly Panenka

CI 19-762237

Plaintiff)

)

vs.)

Rabona Foods)

Honorable Tina Beeder

Defendant.)

Presiding Judge

WITNESSES, EXHIBITS, AND STIPULATIONS

Witnesses for Plaintiff

- 1: Kelly Panenka
- 2: Rowen Rubisco
- 3: R.J. Midfield

Witnesses for the Defendant

- 1: Frankie Flakke
- 2: August Storm
- 3: Bobbie Woodstein

Exhibits

- 1. Newspaper Article
- 2. Photos of Signs and Toilet Papered Gate at Porkenheimer's
- 3. Panenka's Rabona Contract
- 4. Photos of Signs and Buckets from All-Star Game
- 5. *Daily Cynic* Newspaper Article
- 6. Interview Report
- 7. FDA Poll
- 8. Photos of Storm's Car
- 9: Woodstein Notes

Stipulations

Both sides stipulate to the following:

- 1. All exhibits included in the case are authentic and accurate in all respects. No objections to the authenticity of the exhibits will be entertained.
- 2. **This is a work of fiction.** Names, characters, businesses, places, occupational characteristics, events and incidents are either the product of the Case Committee members' imagination or are intended to be used in a fictitious manner. Any resemblance to actual persons, living or dead, or actual events is purely coincidental.
- 3. All witnesses are fictional and written so that they may be played by any student regardless of gender. Students are to complete the team roster and designate the preferred pronoun to be used in connection with themselves or the witnesses they will be portraying.
- 4. All witnesses must testify.

Jury Instructions

INSTRUCTION No. 1

Members of the jury:

Now that you have heard all of the evidence, it is my duty to instruct you in the law.

(1) It has been my duty to see that this trial was conducted fairly and efficiently and, in a manner, consistent with Nebraska law. As part of that duty, I have ruled upon objections and other legal questions that came up during the trial. The law does not permit me to comment on the evidence, and I have not intentionally done so. If it appears to you that I have commented on the evidence, during either the trial or the giving of these instructions, you must disregard such comment entirely. You must not interpret any of my statements, actions, or rulings, nor any of the inflections of my voice, as reflecting an opinion as to how this case should be decided.

(2) It is my duty to tell you what the law is. It is your duty to decide what the facts are and to apply the law to those facts. In determining what the facts are you must rely solely upon the evidence in this trial and the general knowledge that everyone has. You must disregard your personal knowledge of any other specific fact. The only reason for a trial is that there is some dispute regarding the facts. It is your duty to resolve that dispute. You must apply the law in these instructions, even if you believe that the law is or should be different. No one of these instructions contains all of the law applicable to this case. You must consider each instruction in light of all of the others. The law demands of you a just verdict. You must not indulge in any speculation, guess, or conjecture. You must not allow sympathy or prejudice to influence your verdict.

(3) It has been the duty of the attorneys to use all honorable means to protect their clients' interests, including making any objections they deem proper.

(4) In determining what the facts are, you must rely solely upon the evidence that has been presented here within the four walls of this courtroom and that general knowledge that everyone has. Other than that general knowledge that everyone has, you must disregard your personal knowledge of any of the facts in this case.

(5) The evidence in this trial consists of the testimony of witnesses, documents, and other things received as exhibits, any facts that have been stipulated—that is, formally agreed to by the parties—and any facts that have been judicially noticed, that is, facts I say you must accept as having been proved, even without further evidence. Statements and arguments by the lawyers for the parties in this case are not evidence. Objections to questions are not evidence. Do not be influenced by any objection. If I sustained an objection, disregard the question and do not speculate as to what the answer might have been. Testimony that I told you to disregard is not evidence and you must not consider it.

(6) Do not take anything I have said or done as an expression of my opinion as to how this case should come out or how you should resolve any issue of fact. Do not allow sympathy or prejudice to influence you. Do not indulge in any speculation, guess, or conjecture. Do not make any inferences that are not supported by the evidence.

(7) You alone will decide the credibility, that is, the believability, of the witnesses. You alone will decide how much weight to give each piece of evidence and how to resolve any conflicts in the evidence. In determining this, you may consider: the sources of the witness's testimony, including the witness's ability to have seen, or heard, or known the things about which he or she testifies; the witness's ability to remember and to communicate accurately; the conduct and demeanor of the witness while testifying; whether the witness has an interest in the outcome of this case, a relationship to the parties, or any bias or prejudice; any previous statement or conduct of the witness, which tends to support or to contradict the witness's testimony at this trial; the reasonableness of the testimony of the witness; and any other evidence that affects the credibility of the witness or that tends to support or contradict the testimony of the witness.

Submitted this final day of trial by Stephanie Gooch Urbom, Presiding Judge

INSTRUCTION No. 2

You are further instructed that:

The evidence from which you are to find the facts consists of the following:

1. The testimony of the witnesses;
2. Documents and other things received as exhibits;
3. Any facts that have been stipulated-that is, formally agreed to by the parties; and
4. Any facts that have been judicially noticed-that is, facts I say you must accept as true even without other evidence.

The following things are not evidence:

1. Statements, arguments, and questions of the lawyers for the parties in this case;
2. Objections to questions;
3. Any testimony I told you to disregard; and
4. Anything you may have seen or heard about this case outside the courtroom.

NJI2d Civ. 1.02. EVIDENCE

INSTRUCTION No. 3

You are further instructed that:

There are two kinds of evidence, direct and circumstantial.

Direct evidence is either physical evidence of a fact or testimony by someone who has first-hand knowledge of a fact by means of his or her senses. Circumstantial evidence is evidence of one or more facts from which another fact can logically be inferred.

The law makes no distinction between these two kinds of evidence. A fact may be proved by either direct evidence or circumstantial evidence or both.

NJI2d Civ. 1.31. DIRECT AND CIRCUMSTANTIAL EVIDENCE

INSTRUCTION No. 4

You are further instructed that:

You are the sole judges of the credibility of the witnesses and the weight to be given to their testimony. In determining this, you may consider the following:

1. The conduct and demeanor of the witness while testifying;
2. The sources of information, including the opportunity for seeing or knowing the things about which the witness testified;
3. The ability of the witness to remember and to communicate accurately;
4. The reasonableness or unreasonableness of the testimony of the witness;
5. The self-interest or lack of self-interest of the witness in the result of this case;
6. The apparent fairness or bias of the witness, or the witness's relationship to the parties;
7. Any previous statement or conduct of the witness that is consistent or inconsistent with testimony of the witness at this trial; and
8. Any other evidence that affects the credibility of the witness or that tends to support or contradict the testimony of the witness.

NJI2d Civ. 1.41. EVALUATION OF TESTIMONY-CREDIBILITY OF WITNESSES

INSTRUCTION No. 5

You are further instructed that:

A witness who has special knowledge, skill, experience, training, or education in a particular area may testify as an expert in that area. You determine what weight, if any, to give to an expert's testimony just as you do with the testimony of any other witness. You should consider the expert's credibility as a witness, the expert's qualifications as an expert, the sources of the expert's information, and the reasons given for any opinions expressed by the expert.

NJI2d Civ. 1.42. EXPERT TESTIMONY

INSTRUCTION No. 6

STATEMENT OF THE CASE

The Plaintiff, Kelly Panenka, claims to have entered into an endorsement contract with Rabona Foods, Inc. Plaintiff claims that s/he substantially complied with his/her obligations under the contract but that the defendant, Rabona Foods, Inc, breached the contract by terminating it and thereafter, refusing to pay the amount sued under the contract.

The Plaintiff claims that s/he was damaged as a result of Defendant's breach and seeks a judgement against the defendant for \$100,000.00.

The Defendant claims that there was no valid contract between it and the Plaintiff because the Plaintiff made representations that were false and material and on which the defendant reasonably relied in making its decision to enter into said contract. Plaintiff denies making false representations.

Even if there was a valid contract between the parties, Defendant denies it was in breach of the contract because it had the right to terminate the contract pursuant to section 9.2(b) given the events which occurred on June 16, 2018, and Plaintiff's response thereto.

Court has determined as a Matter of Law that the following facts are true and you must accept them as true:

1. Nebraska Law governs this lawsuit;
2. All exhibits included in the case are authentic and accurate in all respects. NO objection to the authenticity of the exhibits will be entertained.

NJI2d Civ. 15.01. STATEMENT OF THE CASE-BREACH OF CONTRACT

INSTRUCTION No. 7

You are further instructed that:

Plaintiff claims that her/his conduct conformed to the expectations in the contract or that s/he provided substantial performance.

Performance is substantial if the party made a good faith or an honest effort to live up to his/her part of the contract and any deviations from the terms or requirements of the contract were relatively minor and unimportant.

NJI2d Civ. 15.07. SUBSTANTIAL PERFORMANCE

INSTRUCTION No. 8

In determining whether there was a valid contract between the parties you must consider the Defendant's defense of Material Misrepresentation.

The Defendant has asserted that the Plaintiff made a material misrepresentation of fact that caused it to enter into the agreement with the Plaintiff.

In connection with this defense the Defendant has the burden of proving by the greater weight of the evidence each and all of the following:

1. That the Plaintiff made the claimed representation;
2. That the representation was false;
3. That the representation was material;
4. That the Defendant relied on the representation in agreeing to the contract; and
5. That the Defendant's reliance on the representation was reasonable.

EFFECT OF FINDINGS

If you find that the Defendant has met its burden of proof, then your verdict must be for the Defendant as this means there was no valid contract between the parties. If you find the Defendant has not met its burden of proof, then you must disregard this particular defense in reaching your decision in this case.

INSTRUCTION No. 9

You are further instructed that:

A false representation may take one or more of three forms:

1. It may be a written or oral statement.
2. It may consist of conduct or actions intended to prevent another from learning a fact, conduct, or actions known to be likely to prevent another from learning a fact.
3. It may consist of a person's failure to disclose a fact known to him/her), when: a. S/he knows that disclosure is necessary to prevent a previous representation from being either fraudulent or false and material; or b. S/he knows that disclosure would correct the other party's mistake as to a basic assumption on which that other party is making the contract and where such nondisclosure amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing; or c. S/he knows that disclosure would correct the other party's mistake as to the contents or effect of their written agreement.

NJI2d Civ. 15.23. FORMS OF FALSE REPRESENTATION

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

Kelly Panenka

CI 19-762237

Plaintiff

vs.

Rabona Foods

Defendant.

Honorable Tina Beeder

Presiding Judge

Witness Statement of Kelly Panenka

1 My name is Kelly Lindsey Panenka. I was born in Messi, Nebraska. I'm a Solo child. No brothers
2 or sisters, just my soccer teammates. I live at 1214 Kickkapoo Road in Goldenrod. Funny that our
3 street address includes the number of goals in 14 World Cups that the legendary Pelé made
4 during his soccer career.

5 My parents, Paul Kevin ("P.K.") Panenka and Brandi C. Panenka, have always encouraged me to
6 play soccer. Dad coached me as long as he could, but it wasn't long before my parents hired me
7 my own personal skills coach, Norman Borlaug, to teach me what Dad couldn't. Coach Norm has
8 been with me no matter what team I play on. Yeah, Coach Norm is the great nephew of the
9 1970 Nobel Peace Prize Laureate, but his great uncle had nothing to do with soccer.

10 Ever since I can remember I had a soccer ball at my feet. By the age of 2, I already had so
11 many videos of me playing soccer on UTube, that I had my own channel. I think I was 4 years old
12 when I demonstrated how to nutmeg Franz Beckenbauer on The Ruzanna Show. They thought it
13 was a big deal, but it was as easy as dribbling around Diego Maradona. Not even a challenge.
14 I was a featured guest on Ddude Perfectt and when I was 5 years old, my soccer scissor kick trick
15 shot video had over 10 million views.

16 Once I was old enough to play organized soccer, we moved to Goldenrod and I went directly to
17 the select travel teams. I have played soccer year around my whole life. When I'm not playing
18 soccer, I am watching soccer games and watching soccer tricks on UTube. What else is there? I'm
19 not worried about my grades, because I will be world famous when most kids are trying to figure
20 out their major. I'm not interested in that. My major is soccer. Nobody can do what I can do with
21 a soccer ball.

22 By the time I got to Rooney Middle School, I was already being recruited by colleges and
23 European youth academies. I had my own highlight videos on social media, but my parents
24 decided we needed to do this right, so we made sure my club, Coach Ronaldo, was sending my
25 Hudl highlights and matches to the best colleges, soccer clubs and professional teams worldwide.
26 After I was named Hudl's Halimotxo Athlete of the Year, Hudl shared even more of my content, in
27 fact I was even showcased by Hudl Studios in a spotlight story. My highlight videos got even
28 more traction and more shares on my social media. You can find me on Yoodell, Prontogram,
29 WallSpace, SnappyGab and of course UTube. #ImEverywhere

30 It wasn't long before my parents agreed to let me go straight to the Pros.

31 I didn't even play for my high school team. I stayed with my select travel team, the Sandhill
32 Cranes. My best friends are all on my soccer team. One night a few years ago, after an away

33 tournament...I think it was March 25 or so, we stopped at Gerrard's Chicken & Waffles to load
34 up on some carbs and celebrate International Waffle Day. I was starving after scoring three
35 goals! The team was having a great time; however, I wanted to get home and check my fan mail.
36 I saw August heading out the door, so I hitched a ride with him/her.

37 We were driving down County Road 27 and all of a sudden, we were at the gates of ole
38 Porkenheimer's Industries. They had spray paint and toilet paper. I didn't know what they were
39 doing. They just told me that if I was friends with them, that I'd join in and either way I wasn't
40 getting home any sooner. So, I grabbed some toilet paper and papered some trees and gates.
41 Well, that wasn't a great idea, because we all got in trouble. As soon as the officer saw me, I got
42 yellow carded and had to complete Juvenile Diversion, so at least it isn't on my permanent record.
43 Exhibit # 1 is an accurate copy of the newspaper article about Porkenheimer's. Exhibit #2
44 contains accurate photos of the toilet papered gates and signs we left at Porkenheimer's.

45 My senior year in high school, I got drafted by the Newport Gnomes. My shot had come. I was
46 going straight into the Pros. It was my first stop on my way to super stardom. Then, we started
47 getting offers from different corporations for sponsorships - Rabona wasn't the only one. Every
48 company wanted me as their spokesperson. I have mass appeal. Not just soccer. Either you want
49 to be me, date me or have me as a member of your family. There was Victoria, the worldwide
50 shoe company; Richard's Sporting Goods, a shin guard company; and the energy drink
51 Halimotxo, but I would be the only face of BreakFast, so that was the winner. Exhibit #3 is an
52 accurate copy of my Rabona Contract.

53 I rode to the All-Star Game with August Storm, but as soon as we got there, I left my friends and
54 checked in with the Rabona reps. I was wearing my Newport Gnomes soccer jersey and my
55 BreakFast hat. I showed up when I was supposed to, and I shook all the hands that I was supposed
56 to. I handed out a lot of hats. Took so many selfies I can't even count them. I was in the Rabona
57 corporate sky box during the Game itself. After the Game, there was a press conference and a
58 promotion to give away BreakFast to everyone that was there.

59 I didn't know what my friends were planning to do, and I didn't have anything to do with it. All I
60 know about GMOs is that ever since I was old enough, I wanted to drive a hot red GMO. But I
61 guess it isn't a car. Who knew? Anyway, it was the same sort of thing that they always did, they
62 had some pretty funny posters and chants, they tried to draw attention to themselves and then
63 they left. I didn't think it was that big of a deal. Exhibit #4 contains accurate photos of the
64 posters and buckets from the protest at the All-Star Game.

65 I got interviewed by Bobbie Woodstein after the Game. S/he didn't want to ask about me or my
66 big break going to the Newport Gnomes. S/he just wanted to keep talking about the GMOs in
67 BreakFast and the "protest" by my friends. Exhibit #5 is an accurate copy of the Daily Cynic
68 Newspaper article. If August Storm doesn't want to put "poison" in his/her body, s/he shouldn't.
69 Free Speech and all that, but I just kept signing hats, answering questions and taking selfies. I
70 don't think I said what s/he said I did, but to be honest, if it ain't about me or soccer or me and
71 soccer, I don't know and I don't care.

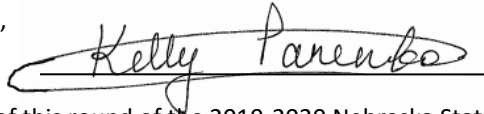
72 I don't know what the fuss is all about with me and Rabona. They signed me because I am the
73 greatest thing to happen to American soccer since Mia Hamm. So, what if my friends showed up
74 at the All-Star Game with protest signs? I didn't deserve the red card. I was notified that my

75 contract was over by a call from my lawyer, so I decided to file this lawsuit. With me in their ads,
76 BreakFast would have been a sure winner.

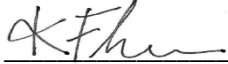
WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

A handwritten signature in cursive script that reads "Kelly Panenbo". The signature is written in black ink and is positioned above a horizontal line.

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2019-2020 Nebraska State High School Mock Trial Competition.

A handwritten signature in cursive script that reads "Kristi Ann Flowers". The signature is written in black ink and is positioned above a horizontal line.

Kristi Ann Flowers, Notary Public

My Commission Expires: December 31, 2019

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

Kelly Panenka

CI 19-762237

Plaintiff

)

)

vs.

)

Rabona Foods

)

Honorable Tina Beeder

Defendant.

)

Presiding Judge

Witness Statement of Rowen Rubisco

1 My name is Rowen Rubisco. I live in Goldenrod at 1356 Stratford Ave, which is only 20 miles or
2 so from Island Lake. I am single – have always flown solo - and have no children. I am
3 enthusiastic about hunting. The waterfowl by Island Lake are just fabulous. My nephew Matt and
4 niece Liz visit me in Goldenrod and then we make a weekend of camping at the lake and doing
5 some hunting. Great way to kick back and spend some time with family.

6 Since I moved here to take a job with Rabona Foods back on October 13, 2014, I've had time to
7 explore the historic trail at the National Wildlife Refuge by Gimlet Lake. Honestly, I have just
8 been too busy with my career to get tangled up in other things.

9 Before this job found me, I obtained an undergraduate degree in communications from the
10 University of Idaho Coeur d'Alene in 2007. Then, I earned another bachelor's degree online from
11 Appalachian State University in 2008 in agriculture. You realize that Appalachian State
12 University is located in Boone, North Carolina, and of course, the city was named after the famous
13 frontiersman – Daniel. I've always wanted to visit Boone as this city is known for its Gamekeeper
14 Restaurant. This is a farm to table type of joint that uses local food on the ole wood fired grill for
15 smoking meats and veggies.... just my kind of rustic place.

16 Sorry, I digress! After graduating from Appalachian State University, I started working at the
17 *Nebraska Farmer* and was there for four years.... tough job market! The *Nebraska Farmer* is
18 located in the Bighorn Valley, a small town in the Nebraska Panhandle. Again, I liked all the
19 hunting.

20 I was then hired by the *Sand County Almanac* as an agriculture journalist, which involved not only
21 writing articles but also researching and verifying the data in the story. My supervisor was Aldo
22 Leopold and I just idolized him! And you know that the Almanac was translated into 14
23 languages including Czech, Finnish, German, Italian, French, Russian and Portuguese to name a
24 few.

25 Getting hired in late 2014 at Rabona as the Marketing Director was a dream of mine, as it
26 allowed me to use both my journalism and agriculture degrees at a prestigious company. Plus, I
27 was able to research and interview all the employees who developed the new products, which
28 was just fascinating. The mind of inventors!

29 I moved to Goldenrod in the fall of 2014 to be close to the corporate headquarters. That was
30 kind of foolish since most of the really big stars are in larger, more densely populated cities, but
31 serendipity won out.

32 One of my best ideas was to engage a persona to be the “face” for our new BreakFast product.
33 When I learned that local soccer star Kelly Panenka had been drafted by Newport’s professional
34 soccer team, the Newport Gnomes, s/he looked to be a sure-fire winner. My star-grabbing work
35 involves a lot of research especially by social media snooping. Calculate the odds of finding Kelly
36 here in Goldenrod. Incredible.

37 I scheduled an interview with Kelly for Tuesday May 1, 2018. S/He appeared with her/his
38 coach, Norma Borlaug and his/her financial adviser, Lauren Buffet. It seemed weird at the time,
39 but s/he was not accompanied by a parent. I explained that Rabona was looking to retain
40 her/him as a product spokesperson. When I explained the finances, s/he was kind of
41 unimpressed. We discussed her/his scholastic experience. Basically, Kelly is a high school
42 graduate with essentially no extracurricular activities except soccer. S/he displayed a lot of
43 energy. My normal protocol was used.

44 S/He provided social media access information so I could do a careful background check. This
45 investigation disclosed almost nothing of note.

46 At the conclusion of the interview I recommended a 1-year contract at an annual rate of
47 \$100,000.00 per year. I offered a very high rate because we really needed, in my opinion, to
48 jump start corporate spending for marketing purposes and Kelly was just the person to make
49 things happen. Also, the contract was renewable annually and this was due to the relatively short
50 life span of professional athletes, which nearly guaranteed exclusive use of Kelly’s images.

51 Additionally, I recommended that a test photo shoot and a marketing analysis be done. Naturally,
52 we needed permission from the Gnomes to use their uniform in our marketing approach. Kelly
53 agreed to fully cooperate in obtaining that consent, which was granted. I did not consider whether
54 we should include a non-competition clause. I did not consider whether we should have an
55 exclusivity clause.

56 I have reviewed Exhibit #6, and it is a true and accurate copy of the original interview report
57 which I submitted electronically through ordinary business channels. I am not the custodian of
58 company records, but Exhibit #6 is actually an exact and accurate copy of my personal copy that
59 I forwarded to Human Resources. I created the report, based on my meticulous handwritten notes,
60 immediately after interviewing Kelly Panenka. It is my habit to do so. The report is based upon
61 what they say and my impressions of them. When Rabona uses models for any type of marketing
62 materials, I always take copious notes when interviewing potential “faces” for our products. I
63 have done this ever since getting this job. I do not know why the company’s copy is missing.

64 I did print a copy of the standard contract for Kelly to sign, which s/he did in my presence. I have
65 reviewed Exhibit #3 and it is a true and correct copy of the contract s/he signed. The other
66 signatures are his/her coach and her/his financial advisor and where Flakke was to sign.

67 I submitted the report and signed contract through proper channels. When I received a return
68 electronic copy, the CEO’s name had been typed on the electronic form. I assume this means that
69 the CEO read the report and signed the original hardcopy. It is this finalized form that I saved
70 into my personal file and which I sent to Panenka’s attorneys.

71 I was hired by Frankie Flakke's predecessor and I suspect that when Flakke took over, s/he
72 wanted to "clean house" and I was an easy target. We never did get along. I guess competence
73 is intimidating to some people. I got fired unjustly. It was clear that I was to be the scapegoat
74 for how things happened with Kelly Panenka. When Flakke, who is aptly named by the way,
75 took over, I wasn't around long, however, I did see the poll which I believe is exhibit #7.

76 Still, I did a great job securing a real national prospect with my first big contract negotiation. I am
77 not testifying for Kelly in revenge. I am telling the truth and not just to get back at the company
78 for firing me. When I learned about Kelly's endorsement contract being terminated, I sent his/her
79 attorneys a copy of my memo and the contract just in case the company's "business records"
80 turned up missing. Wink, wink.

81 Just to be completely open, I do not have any criminal record. Further Affiant sayeth naught. I
82 just love saying that.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,



SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2019-2020 Nebraska State High School Mock Trial Competition.



Kristi Ann Flowers, Notary Public

My Commission Expires: December 31, 2019

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

Kelly Panenka

Plaintiff

CI 19-762237

vs.

Rabona Foods

Defendant.

Honorable Tina Beeder

Presiding Judge

Witness Statement of R.J. Midfield

1 My name is R.J. Midfield. I am Professor Emeritus at Dalhousie University in Halifax, Nova Scotia.
2 I earned a bachelors degree in political science from Princeton University in 1984, a masters
3 degree in Actuarial Science from Michigan University in 1986, and a PhD in Social Anthropology
4 from Harvard in 1990. My spouse is an accountant with the Buckley Bancroft Chartered
5 Accountants firm, which is one of the top 10 accounting firms in Canada. S/he travels quite a bit,
6 especially during tax season. No surprise that s/he is in high demand as s/he is just brilliant,
7 which is one reason we got married.

8 I live at 7564 Admirals Way, which intersects with Ballot Blvd in Halifax. When I'm not at
9 Dalhousie University, I can be found walking my best friend, Inuk, a Kerry Blue Terrier. Inuk is a
10 purebred, and of course, you know that this breed has keen eyes that accentuate the nobility of
11 the long terrier head. Inuk is very focused. After careful research, I bought Inuk from the most
12 reputable, sought after breeder here in Halifax. Canadians travel from Vancouver just to buy a
13 Kerry Blue Terrier from Sandy. And I probably don't need to state that this breed has won the
14 most Canadian Kennel Club Best in Show. I have also traveled with Team Canada in my 2017
15 Corris Gray Metallic Land Rover Discovery Sport to compete at the Westminster Dog Show. I had
16 to have my "Ranger" detailed when I returned as the Ebony interior was a bit dirty.

17 A hobby of mine is to attend the Warehouse Market hosted by the Afishonado FishMongers and
18 listen to Mikaila Bick's detailed presentations on sustainable seafood. One other educational
19 hobby is listening to podcasts. There are two podcasts that I find most intellectually stimulating.
20 One is Relative Genius: Albert Einstein with Pat Walter and Rachel Cusick and the other is E –
21 Elements, which is about the Periodic Table and looking at it from a different perspective.
22 Fascinating. Plus, RadioLab, a Peabody Award Winner, produced these two podcasts.

23 My career research interests are in the area of survey research methodology and political
24 behavior. I have been commissioned to perform and analyze polling for numerous private and
25 public agencies to collect public opinion on topics ranging from social reform to public bond
26 issues. I have been extensively published, including articles on Canadian and American politics,
27 trending social issues, low-wage work and economic life. I am also actively involved in applied
28 sociology and am frequently a consultant in public affairs research on the factors which help to
29 shape public opinion.

30 Not all polls are created equal. Researchers have noted that "the best polls are produced by
31 independent, nonpartisan polling organizations, with no vested interest in the outcome of the
32 findings. These include organizations like Gallup and the Pew Research Center and as well as

33 media groups such as CBS News/New York Times, ABC News/Washington Post and NBC
34 News/Wall Street Journal. Many surveys are conducted by partisan actors - political consulting
35 firms, industry groups and candidates. In some cases, the findings are biased by factors such as
36 respondent selection and question wording. Partisan-based polls need to be carefully scrutinized
37 and, when possible, reported in comparison with nonpartisan poll results. It is also important to
38 remember that polls are a snapshot of opinion at a point in time.”¹

39 In addition, there are several polling concepts that any poll reviewer should be familiar with that
40 can support or discount the credibility of the information conveyed:

- 41 • “In a public opinion poll, relatively few individuals — the sample — are interviewed to
42 estimate the opinions of a larger population. The mathematical laws of probability dictate
43 that if a sufficient number of individuals are chosen truly at random, their views will tend
44 to be representative.
- 45 • A key for any poll is the sample size: a general rule is that the larger the sample, the
46 smaller the sampling error. A properly drawn sample of one thousand individuals has a
47 sampling error of about plus or minus 3%, which means that the proportions of the various
48 opinions expressed by the people in the sample are likely to be within plus or minus 3%
49 of those of the whole population.
- 50 • In all scientific polls, respondents are chosen at random. Surveys with self-selected
51 respondents — for example, people interviewed on the street or who just happen to
52 participate in a web-based survey — are intrinsically unscientific.
- 53 • The form, wording and order of questions can significantly affect poll results. With some
54 complex issues — the early debate over human embryonic stem cells, for example —
55 pollsters have erroneously measured ‘nonopinions’ or ‘nonattitudes,’ as respondents had
56 not thought through the issue and voiced an opinion only because a polling organization
57 contacted them. Poll results in this case fluctuated wildly depending on the wording of the
58 question.”²
- 59 • “Poll questions can be asked face-to-face or by telephone, with automated calls, or by
60 email or mail. The rise of mobile-only households has complicated polling efforts, as has
61 the increasing reluctance of Americans to participate in telephone polls. Nevertheless,
62 telephone polls have a better record of accuracy than Internet-based polls. Whatever the
63 technique used, it is important to understand how a poll was conducted and to be careful
64 about reporting any poll that seems to have employed a questionable methodology.
- 65 • Social desirability bias occurs when respondents provide answers, they think are socially
66 acceptable rather than their true opinions. Such bias often occurs with questions on difficult
67 issues such as abortion, race, sexual orientation and religion.

¹ Excerpt from “Polling Fundamentals and Concepts: An Overview for Journalists” by Leighton Walter Kille (November 10, 2016) which is based on work by Thomas Patterson, Harvard’s Bradlee Professor of Government and the Press and research director of Journalist’s Resource; Charlotte Grimes, Knight Chair in Political Reporting at Syracuse University; and the Roper Center for Public Opinion Research at the University of Connecticut <https://journalistsresource.org/tip-sheets/reporting/polling-fundamentals-journalists/> is licensed under CC BY-ND 4.0 - <https://creativecommons.org/licenses/by-nd/4.0/>

² Id.

- 68 • Beware of push polls, which are thinly disguised attempts by partisan organizations to
69 influence voters' opinions rather than measure them.
- 70 • Some survey results that get reported are based on a "poll of polls," where multiple polls
71 are averaged together. Prominent sites that engage in this practice are FiveThirtyEight,
72 Real Clear Politics and the Cook Political Report. There are, however, any number of
73 methodological arguments over how to do this accurately and some statisticians have
74 objections to mixing polls at all."³
- 75 • Proper analysis of public-opinion surveys should "include information on how they were
76 conducted — who was polled, when and how. Report the sample size, margin of error, the
77 organizations that commissioned and executed the poll, and whether they have any
78 ideological biases. Avoid polling jargon, and report the findings in as clear a language as
79 possible."⁴

80 In April, 2017, I was commissioned by the Food and Drug Administration to collect and analyze
81 polling and public opinion on the issue of Genetically Modified Organisms relative to the United
82 States food industry. The idea was to aggregate public opinion on the matter to help instruct US
83 domestic policy on food production and imports. The FDA was also interested in whether the
84 matter of GMOs had reached levels of social concern that would justify the agency taking a
85 stance on the matter in upcoming regulatory considerations or whether further education on the
86 matter was necessary.

87 The parameters of the FDA's inquiry included certain benchmarks that dictated the conclusions that
88 were ultimately made about GMOs and public opinion in the United States. Each benchmark was
89 premised on the 50%-rule – i.e. should any matter or issue polled result in responses that, after
90 accounting for the margin of error, was consistent across more than 50% of the polled population,
91 the FDA would consider that issue or matter worthy of further policy or educational consideration.
92 As part of my duties for the FDA on the GMO issue, I prepared a simple poll which is marked as
93 Exhibit #7, and this is the poll I emailed Rabona at their request. The idea was to gauge public
94 knowledge and opinion on the GMO matter. The poll was conducted across the United States,
95 included rural and metropolitan population bases from every state, and spanned across all
96 genders, economic sectors, and all ages – 18 to 65. Participants included randomly selected
97 individuals through automated phone calls and face-to-face interactions, as well as web-based
98 "clickbait" polls conducted on various websites such as Google. The poll took three weeks to
99 conduct, included 250,000 responses, and resulted in a mathematically-calculated margin of
100 error of plus or minus 5%.

101 After aggregating the data in the FDA poll and analyzing against its criterial, I made the
102 conclusion that the GMO issue did not have sufficient social traction to warrant FDA action at the
103 time. Several key findings supported this conclusion. First, more than 50% of the individuals
104 polled indicated they had insufficient familiarity or awareness of the issue to form an opinion.
105 While the poll showed that those having an opinion were 60% more likely to have unfavorable
106 opinions of GMOs in food, many of those responses came from the "clickbait" internet polls

³ Id.

⁴ Id.

107 offered to users based on a variety of analytical factors, internet search history, and cached
108 internet cookies.

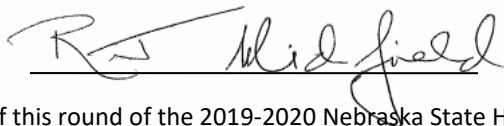
109 Moreover, 55% of all respondents indicated that they would eat GMO food products if labeled
110 accordingly and these respondents also expressed low levels of risk assessment or threat of GMO
111 products in domestic food production. My research did not specifically address BreakFast or
112 consumers of similar products, mine addressed the broader question of GMOs in the food
113 industry.

114 Based on this data, I can state to a reasonable degree of polling, public opinion and actuarial
115 certainty that GMO presence in the food industry is not a topic or issue tending to attract public
116 disrepute, contempt, scandal, ridicule or that would tend to shock, insult, or offend the majority of
117 the consuming public.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,

A handwritten signature in cursive script, appearing to read "R. Midfield", written over a horizontal line.

SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2019-2020 Nebraska State High School Mock Trial Competition.

A handwritten signature in cursive script, appearing to read "K. Flowers", written over a horizontal line.

Kristi Ann Flowers, Notary Public

My Commission Expires: December 31, 2019

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

Kelly Panenka

Plaintiff

vs.

Rabona Foods

Defendant.

CI 19-762237

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Honorable Tina Beeder
Presiding Judge

Witness Statement of Frankie Flakke

1 My name is Frankie F. Flakke and I live at 1871 Rd 63, which is just outside the city limits of
2 Goldenrod. We have an acreage and a large garden along with two black and tan German
3 Shepard dogs named Zeus and Athena. Zeus is Mr. Protector of our family and runs with me
4 every morning as I prepare to compete in 5K and 10K races. Athena is very calm, and she loves
5 playing with the twins!

6 I just purchased a 2018 Honda Odyssey Elite Minivan in my favorite color – green or Forest Mist
7 Metallic to be exact. I know what you are thinking a minivan!?! But its great for the dogs and the
8 grandkids. With just a push of a button, the doors all open and everyone can jump or climb right
9 in! It has the leather seats so when the dogs or twins spill anything its easy to wipe up. The
10 storage is amazing. I can haul all my friends for our races, and I love that I can take the twins
11 places when needed! The rear entertainment is perfect for the twins. I never thought I would own
12 a minivan, but I'm so happy with the purchase!

13 Oh, yes, back to the case. I am the president and CEO of Rabona Foods. We are a nationwide
14 producer of a number of products including breakfast cereals and granola bars. Rabona has
15 been in existence since the 1930s. It has grown substantially over the years but is still a privately,
16 I should say, family, owned company headquartered in Goldenrod, Nebraska. We take pride in
17 our solid midwestern roots and values, and the management team has emphasized this in our
18 advertising. In fact, the Rabona Mission Statement is "Making authentic heartland food to nourish
19 families through the prudent stewardship of our environment."

20 That said, the company is growing fast and is starting to compete with the big boys of the food
21 industry. We are most famous for our cereal, "Golden Rods." I have been with the company for
22 15 years, following the footsteps of my grandfather Frank Isaac Flakke. I am 55 years old,
23 married with two grown children both of whom, like me, grew up on Golden Rods. My spouse,
24 Blair, is an Agricultural Engineer at DJ Huffman Engineering and has a Masters of Engineering
25 Degree from Iowa State University, which is ranked number one in the nation for
26 Biological/Agricultural Engineering Programs. Blair received her/his Masters degree in 1989
27 and builds drones in her/his spare time to survey our acreage. Our children are Owen, who is 30
28 and has twin girls Violet and Rose, and Victoria, who is 28 and studying for her masters in Food
29 Sciences at John Neihardt University in Meadowlark, Nebraska. No admission scandals here!

30 Oh, yes, we also have two Pygmy goats named Baaa-rabra Anne and Baaarnabas. These two
31 little scoundrels love to climb on about everything. Of course, the fence around the barn is 5 feet

32 high so that the goats can't escape. As I mentioned before, we have a garden but no Azaleas
33 since these are poisonous to goats.

34 Yes, back to Rabona. After I graduated from John Neihardt University, I went on to earn an MBA
35 at Iowa State University in December 1990 and then took a job as a Human Resource Officer
36 with a small pharmaceutical company, Sitraxon, in Iowa. I began my career at Rabona as the
37 Director of Human Resources in 2005. I then became Executive Vice President for Product
38 Development and finally CEO on October 14, 2014, right after the Columbus Day holiday. Blair
39 and I celebrated at Bishop's Bistro, a local favorite where I dined on Braised Short Ribs of Beef,
40 mashed potatoes and roasted beets. Blair ordered the Coq au Vin and roasted asparagus. We
41 topped off the celebration with a chocolate souffle.

42 Starting in 2016 we began working on the formula for a breakfast drink, which is an entirely new
43 product line for Rabona. I don't intend to give away the recipe because it is proprietary and not
44 relevant to the dispute between Plaintiff and Rabona. Suffice it to say, it turned out to be a
45 delicious, nutritious and satisfying way to start the day. And convenient. You can grab it as
46 you're going out the door each morning. We named it "BreakFast." The tagline is Breakfast real
47 Fast!

48 Our marketing department wanted to target the "on the go", young, smart, athletic, health
49 conscious, busy consumer with this new product. Not just single men and women who don't take
50 time to make a breakfast each morning, but the soccer Moms and Dads as well. Since we were
51 targeting an under 40 demographic, Rowan Rubisco, director of our marketing department,
52 recommended we try to sign an endorsement contract with a sports celebrity to promote our new
53 product. Exhibit #3 is an accurate copy of the contract.

54 S/he thought the Plaintiff, Kelly Panenka, would be the perfect person to endorse it and speak on
55 our behalf. Rowan said that Kelly is recognized nationwide as a soccer phenom and is a very
56 photogenic and wholesome kid who grew up right here in Goldenrod. Like everyone who lives in
57 Goldenrod I was aware that Kelly was touted as the next great soccer player - on the level of
58 David Beckham/Alex Morgan - but otherwise I don't know much about him/her. I left all of that
59 up to Rowan. Rowan sent me a memo saying s/he interviewed Kelly and checked into her/his
60 background and recommended we sign him/her. Exhibit #6 is an accurate copy of the interview
61 report.

62 I was very busy with some sticky financial issues at the time and didn't check the link referenced in
63 the memo. Didn't see the need to. I have to say I was a little surprised that Kelly agreed to an
64 endorsement contract as it meant s/he couldn't play college soccer. But the rumor was s/he was
65 headed straight for the pros. In fact, she didn't even play for her high school team. Rowan
66 thought if Kelly was half as good as the hype about her/him, millions of people would soon be
67 exposed to the Rabona brand and drinking BreakFast each morning.

68 We were ready to launch our new breakfast drink about the same time as the All-Star Soccer
69 game which was being played in Goldenrod for the first time ever (even though Nebraska has
70 had a pro team for over 10 years - the Newport Gnomes...and you can get a cup of java at
71 Lasso Espresso North after the game.) The Marketing Department thought it would be a great
72 idea to launch BreakFast at the game since it was expected the whole city (and surrounding
73 communities) was going to turn out and we were already a local sponsor of the game. We

74 learned that Kelly had signed a contract to play with the Gnomes but hadn't gone public with that
75 information. We sent out a press release to build up little more hype and arranged a press
76 conference on the field to follow the All-Star Soccer game. Kelly Panenka was going to announce
77 that s/he was turning pro and we expected a lot of press coverage. We were going to introduce
78 her/him as our new spokesperson at the same time we unveiled our new product. There would be
79 free "BreakFast" for everyone there.

80 I did not attend the All-Star Game or the product launch following it as I was meeting with our
81 accountants and bankers that weekend to focus on some difficult financial issues that had come up
82 but I saw the news and read the paper. As best I can tell a bunch of ignorant kids decided to use
83 the occasion to protest GMOs. I don't know what those kids were thinking. Their behavior. Their
84 language. Their utter ignorance. It was absolutely despicable. They should be punished for
85 spreading lies about the products Rabona and others make to feed the world. Yes, we use
86 genetically modified crops to make some of our products, but these are not "Frankenfoods" or
87 poisonous as the idiot protesters would have you believe. They are every bit as healthful as
88 products made from non-genetically modified crops. And if you don't think so, you should have
89 your head examined.

90 I made the decision to terminate Kelly's contract with Rabona because of what s/he did and
91 didn't say at the product launch that day. S/he said many of the protesters were his/her friends
92 and not once did s/he condemn their behavior and language. That's the same thing as condoning
93 it. She even suggested that the point these nincompoop protesters were trying to make is worthy
94 of consideration. It is not. And there was not a word from him/her in defense of Rabona. When
95 asked what she thought about BreakFast she said, in all the commotion that afternoon, she hadn't
96 tried it. What kind of spokesperson is that?

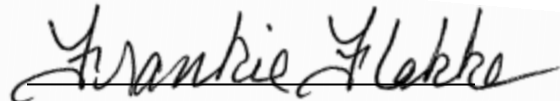
97 I heard that Panenka intends to call some kind of expert witness, aka hired gun, from eastern
98 Canada no less. Exhibit #7 is an accurate copy of the poll. Had I known this was coming, I would
99 have commissioned our own poll aimed specifically at the demographic to which we marketed
100 BreakFast, which Plaintiff's so-called expert did not do.

101 After thinking about what happened, it occurred to me I should have known better than to trust
102 Rowan. His/her job performance had been deteriorating over the last year or so. Turns out this
103 wasn't the first time Kelly had been involved with these protesters. Because of those performance
104 issues and the mistake s/he made in recommending Kelly, I decided to terminate Rowan's
105 employment with Rabona. I fired in house counsel, too - for drafting an endorsement agreement
106 that didn't give Rabona the sole discretion to decide if it had been breached.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,



SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2019-2020 Nebraska State High School Mock Trial Competition.



Kristi Ann Flowers, Notary Public

My Commission Expires: December 31, 2019

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

Kelly Panenka

Plaintiff

CI 19-762237

vs.

Rabona Foods

Defendant.

Honorable Tina Beeder

Presiding Judge

Witness Statement of August Storm

1 My name is August Storm. My parents are Dorothy and Irving Storm, life-long activists and eco-
2 warriors, and so are my 4 siblings and I. We all come by it honestly, because it is so vitally
3 important to protect our planet. My Grandpa Bob sailed on the Higgins Commandos (a vessel
4 dedicated to protecting the ocean and aquatic life) for a summer after he got out of school, and I
5 would love to do the same. Hopefully before the oceans are even more clogged with plastic,
6 trash and dying creatures.

7 Anyway, we have a long-held tradition of standing up for what is right, which is why I'm here. I'm
8 also standing up for my family's company against the likes of Rabona Foods. You have no idea
9 how offensive I find it to be called by Rabona as a witness, when their filthy use of GMOs and
10 chemicals threaten my family's business. Our farming and textile company, Hackberry
11 Homestead, has always used clean and green technology, long before it was trendy. We grow
12 crops absolutely chemical-free. No pesticides or chemical fertilizers, only manure from our grass-
13 fed, free-range cattle. We try very hard to not use products with GMOs, although it is getting
14 more and more difficult to avoid their insidious reach. Which, again, is why I am here.

15 I am 19 years old, the same age as Kelly Panenka, the Plaintiff. Although I have never played
16 soccer, I recalled hearing the teachers in my Montessori school talk about Kelly's prowess on the
17 field. That was probably when I was 5, and we were discussing trajectory and force. We
18 watched that scissor kick video probably twenty times. It was impressive, so it was great when
19 Kelly moved to Goldenrod and started school here. I had some classes with Kelly during middle
20 school and high school, and his/her parents and s/he came to some of the open house gatherings
21 that Hackberry Homestead hosted. These open houses allowed people in Goldenrod to try our
22 products and actually see our eco-friendly operation. Almost everyone in town and in the
23 surrounding area came to one or more of our open houses.

24 I have been concerned about the environment for as long as I can remember. As I said, my family
25 is very eco-conscious, and it just came naturally to me to want to form a group of similarly-minded
26 people my age to address the ecological and environmental concerns in our area. The first time
27 Kelly got involved in one of our protests was on April 22, 2016. I remember, because it was
28 Earth Day. I had driven a group of my environmentally conscious, soccer-playing friends to a
29 tournament out of town. There were four of us in my 2011 midnight blue Toyota Prius, so we had
30 plenty of room when Kelly needed a ride home. It gave me a chance to get to know Kelly better,
31 and see how s/he interacted with my eco-warrior friends.

32 My friends and I had planned to swing by Porckenheimer's Industries, the gigantic corporate pig
33 farm, outside Goldenrod on our way back home. It is well-known that Porckenheimer's is an all-

34 around a bad egg. I've heard they don't pay their employees that well. They crowd their
35 livestock into filthy, cramped pens. Worst of all, this despicable company is contaminating our
36 precious Cottonwood Aquifer by continuously and illegally dumping tons of waste into our water
37 supply. We thought it was poetic to punish these poopers by TPing the entrance gates to the
38 farm. Yes, the photographs in Exhibits #2 and #8 correctly depict the signs I made, the toilet
39 paper on the gate and my car.

40 There was no harm done, as we used completely eco-friendly, biodegradable, 100 percent
41 sustainable, tree-free toilet paper made from bamboo and sugar cane. The posters we planted
42 were made entirely of recycled and recyclable materials. I really wanted to fling feces at the
43 place, as protesting using poop is well-known through history. Oppressed people in India, Africa,
44 Ireland, and pretty much everywhere have thrown poo to express their dissatisfaction and disgust
45 with those acting unjustly. Look it up.

46 Anyway, dumping doo-doo would have been appropriate here to mess around with
47 Porkenheimer's, because that's what they were doing to our water supply. But I chose the higher
48 road, and cleaner route. It was effective. However, apparently somebody at Porkenheimer's
49 reported our protest to the police, and we were promptly picked up. Obviously, Kelly hadn't
50 helped us make the signs and didn't bring the toilet paper. When the time came for the actual
51 protest, Kelly didn't seem to have a problem with it. I think all of us were ticketed and went to
52 Juvenile Diversion and had to pay for the cleanup. The newspaper article, Exhibit #1, talks about
53 our protest, even though we aren't named. Publicity is publicity. Making people aware of the
54 issues is the main thing, and I believe we accomplished that.

55 I swear to tell the truth about the protest at Rabona, because if I don't, the dirt and rocks will cry
56 out. Not that they already aren't crying out, what with all the poisonous garbage Rabona dumps
57 on them. Yes, I planned the protest that was set to take place immediately following the All-Star
58 Soccer game in mid-June.

59 Kelly told me about Rabona having this new "health drink," if that's what you call it. I call it more
60 like Agent Orange. Of course, Rabona won't tell us exactly what's in it, but we know for certain
61 that it is full of high fructose corn syrup made from GMO corn, artificial colors, artificial flavors,
62 and is chock full of nasty chemicals. Someone needed to take a stand. On the day in question,
63 Kelly needed a ride to the All-Star Game. I needed to protest, to stand up for what I believe in,
64 to right the wrongs, or at least let everyone listening know what new toxic waste Rabona was
65 planning on trying to kill us with. So, the same 5 of us rode together, with the signs and the 5-
66 gallon buckets decorated with poison images in my Prius hatchback. On the way there, we sang
67 some of the songs from my protest song playlist.

68 My playlist includes, to name a few: "After the Goldrush;" "License to Kill;" "Trees;" "Last Great
69 American Whale;" "Don't go Near the Water;" "Song to the Last Whale;" "We Are the World;"
70 "I Won't Back Down;" "If I Had a Hammer;" "Blowing in the Wind;" "A Mighty Wind;" and "Song
71 for a Dying Planet." That last one is especially relevant to this case. "We're living on a dying
72 planet, we're killing everything that's alive, and anyone who tries to deny it wears a tie and gets
73 paid to lie." Rabona.

74 I made the signs and decorated the barf buckets, as shown in Exhibit #4. Kelly didn't have
75 anything to do with them. We all knew Kelly was going to the launch of this elixir of death, but

76 we wanted to be there to object to the product. Kelly is okay, but I will never understand how
77 Kelly could stand to be on the same stage as those poison peddlers.

78 So, we all arrive in my Prius, and Kelly leaves to go in and sit by the enemy in their “private
79 box.” My three soccer-playing, fellow eco-warrior friends weren’t playing in the State All-Star
80 game, so we watched the game together. Walking into the stadium, we turned down the offer of
81 free “BreakFast” caps, but we accepted the cans of “ghoul juice” because we had plans for
82 them. In fact, we went back for seconds and thirds.

83 Kelly showed his/her skills during the half-time show. In fact, Kelly WAS the half-time
84 show. Well, except for that time when the two mascots, the Gnebbi Gnome and Sharkey the
85 Shark were doing gymnastics and had a dance-off. Sharkey won, based on the applause. About
86 15 minutes before the game ended, the four of us went out to my car, got out the buckets and
87 signs, and waited. When we heard that the game was over and Rabona was ready to take the
88 stage to promote their poison, we ran in with the buckets and signs and set up, front and
89 center. As we ran, we chanted, “BreakFast is a fake”, “heck no, GMO”, and “go away
90 BreakFast.” We sat the buckets down and started pouring our cans of BreakFast in the poison
91 pail, chanting “BreakFast makes you barf!” I don’t know where Kelly was at that time. I was
92 focused on the audience and how awesome this expression of justice and freedom of speech
93 was! It was the best protest I’ve organized so far!

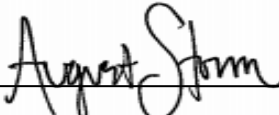
94 We even got some crowd participation, because some spectators threw their cans on the stage,
95 and yelled “boo, Rabona.” My group definitely was not involved with throwing cans. I had a bag
96 for recycling them. In the moment, I might have picked up a bucket and paced in front of the
97 stage. Maybe, in my exuberance, some of the poison might have spilled on the stage, but I sure
98 didn’t dump that toxic waste on purpose!

99 I think our protest was quite successful, because the “launch” turned into a “lurch.” Kelly didn’t
100 have to stick around with the criminals for too long, because the stage was cleared off and
101 people started leaving. I know we proved our point, and I feel that opinions were changed. In
102 fact, I really know we had an impact, because that reporter came right up and interviewed
103 me. Exhibit #5 is an accurate copy of the *Daily Cynic* newspaper article. I remember saying how
104 important it is to know exactly what is in our food, and I talked about how no one knows yet what
105 the long-term ramifications of the use of GMOs are, so it is best to avoid them entirely. What
106 Rabona doesn’t tell you about their product ought to make you wonder. It was a great
107 day. Today is not, because I was forced by subpoena to “sit on the same stage” as Rabona, and
108 I don’t like it. I don’t like it one bit.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,



SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2019-2020 Nebraska State High School Mock Trial Competition.



Kristi Ann Flowers, Notary Public

My Commission Expires: December 31, 2019

IN THE DISTRICT COURT OF WAGON WHEEL COUNTY, NEBRASKA

Kelly Panenka

CI 19-762237

Plaintiff

vs.

Rabona Foods

Defendant.

Honorable Tina Beeder
Presiding Judge

Witness Statement of Bobbie Woodstein

1 My name is Bobbie C. Woodstein and I live at Dingbat Village in apartment 303. The address is
2 2226 Lyle Lane. Yes, this is an unusual name for an apartment complex, however, the owner is a
3 retired editor of the *Tree Planters Gazette*, which is a statewide newspaper. Of course, you
4 realize that a “dingbat” is more formally known as a printer’s character used in typesetting, which
5 given the owners obsession for old school print...makes sense!

6 I really like it here as the Village is pet friendly, has bike storage lockers, a washer and dryer in
7 each unit, charging outlet with USB ports, Fitness Center, media room, security cameras and
8 recently installed Smart Controls for heating/cooling. Additionally, I share the apartment with my
9 pal Peyton whom I’ve known since second grade! We like to bike around Goldenrod on the
10 numerous trails. Plus, we’ve ridden in the annual Kool-Aid Classic Bicycle Tour the last couple of
11 years.

12 Like Peyton, I’m really into music. Some of my favorite songs are “Check this Out” by Marshmello;
13 “Dreamer” by legendary Ozzy Osbourne; “Sweet Sensation” by UB40; “The Middle” by Maren
14 Morris & Zedd; “Get It Right” by Glee Cast; a cool tune to jam out to is “Rebel Yell” by wild man
15 Billy Idol; “Better Not” by Louis the Child; oh, yeah, and when I’m feeling melancholy I listen to
16 “Paralyzed” by NF; and I can just kick back and chill to “This is Me” by Keala Settle; “Feels like
17 Home” by Chantal Kreviazuk, who has some smooth pipes; “Barbara Ann” by the Beach Boys – an
18 oldie but great foot tapping song; “Born to Be Alive” by some Patrick dude who is probably
19 dead; “Thunder” by Imagine Dragons; “I Feel Love” by the late Donna Summer whose real name
20 was LaDonna Gaines.

21 Peyton and I have also taken on the challenge (\$100 per group) from some friends to try and
22 cook through an entire cookbook in one year! We all love food and watching cooking shows and
23 flipping through food magazines and deciding what healthy recipes (Organic and No GMO’s) we
24 want to make and eat. Our Prontogram is full of pictures of all the meals we want to create! We
25 have made it a competition to see which group can do it faster. Peyton and I spent the first
26 couple of weeks figuring out what we would need to do to win the \$800 prize money. We had
27 to break it down by how many recipes there were in the book and then figure out realistically
28 how many we could make per week. Next, we had to organize our supplies and make sure we
29 had plenty of the staple ingredients on hand and that we had the equipment to cook with! We
30 made so many lists – grocery, pantry, fridge, and created a spreadsheet to mark down what we
31 made and still had to cook.

32 Peyton was great about planning out the meals seasonally so that we weren't trying to find beets
33 in the dead of winter! Gotta love the local produce stands and the farmers market in Goldenrod!
34 I think our secret weapon was the seasonal produce - it helped us save money and time!

35 Each group decided to host a monthly dinner gathering to try out the meals we all created. Bonus
36 part was - delicious food and friends to share it with. Peyton and I ended up winning and our
37 Prontogram gained hundreds of new groupies and my blog really helped my creative writing
38 skills. Plus, with the winnings I can put a down payment on my new bike – a Trekk Boone 7. Its
39 pricy, but so worth it! The frame is ridiculously light so it will make carrying it up to my apartment
40 so much easier! I wish it was a different color, but I'll take it – Dnister Black/Viper Red. I'm not
41 sure what Peyton is spending his/her winnings on.

42 Oh, yes, currently, I am a reporter for the *Daily Cynic*. I earned a Bachelor of Journalism degree
43 with a minor in Environmental Studies from the John Neihardt University College of Journalism and
44 Mass Communications in 2017. While in school, I was a reporter for the *Daily Cynic* and was the
45 Opinion Editor my senior year. After graduation I began working for the *Daily Cynic* full-time.
46 Because it is a smaller newspaper, I was asked to cover many types of stories from the most
47 recent string of car break-ins to the latest controversy at City Hall to the annual meeting of the
48 Goldenrod Rose Society.

49 In addition, I work as a freelance reporter covering environmental issues in the region. My stories
50 have been published on several websites including climatechangeisreal.com and
51 weonlyhaveoneplanet.org.

52 I should note that I am providing this testimony pursuant to a Court order in this case. The Court
53 has ordered me to testify pursuant to a subpoena regarding the observations and interviews I
54 conducted relating to the events surrounding this case that were published in the newspaper and
55 online. The Court has ruled that I do not need to reveal any unnamed sources or any unpublished
56 or non-broadcast information that I obtained through the course of my reporting.⁵

57 I have been working on a series of stories about GMOs (genetically modified organisms) for
58 several years. I even reviewed the FDA poll on GMOs, which is Exhibit #7. While my job at the
59 *Daily Cynic* has been educational, I want to eventually move on and work for a national news
60 service. That is no secret.

⁵ Neb. Rev. Stat. §20-146. Procuring, gathering, writing, editing, or disseminating news or other information; not required to disclose to courts or public

No person engaged in procuring, gathering, writing, editing, or disseminating news or other information to the public shall be required to disclose in any federal or state proceeding:

(1) The source of any published or unpublished, broadcast or nonbroadcast information obtained in the gathering, receiving, or processing of information for any medium of communication to the public; or

(2) Any unpublished or nonbroadcast information obtained or prepared in gathering, receiving, or processing of information for any medium of communication to the public.

61 My editor, Jo Greenleaf, assigned me to cover the State All Star Soccer game being held in
62 Goldenrod this year. To be honest, I do not know (or care) much about sports and told my editor
63 as much. She said that because our regular sports reporter was on vacation in Teton National
64 Park, I needed to be a team player for the News.

65 I arrived at the match during the second period. I was surprised at the number of people there
66 watching. As I walked into the stadium showing my press credentials, I overheard some fans say
67 that they were excited that Panenka was there and that they were so glad they had one last
68 chance to see him/her before s/he went pro. I then remembered that there was some phenom in
69 town named Kelly Panenka that all the sports fans drooled over. Sports are really not my thing,
70 however, staying in shape is.

71 The only place to sit was behind a bunch of obnoxious teens who were all wearing BreakFast
72 hats. I saw that Rabona employees were passing them out from a booth they had set up next to
73 the entrance in order to promote their newest product. I tried to take notes about the players and
74 the match. Exhibit #9 is a pic of some of my notes. I really do love a gameday hotdog with
75 mustard! It was difficult to do (remember I know nothing about soccer!) and the teenagers in front
76 of me were making it hard for me to pay attention.

77 I was intrigued by Rabona's presence at the game and quickly learned that Panenka had signed
78 an Endorsement Contract with Rabona. They were planning on introducing Panenka as their new
79 spokesperson after the game. I had investigated several local companies while working on my
80 series of stories about GMOs and looked into Rabona products several times. I never found a
81 connection to GMOs but wondered what their new product BreakFast was all about. I stuck
82 around after the game to watch the unveiling of Panenka as the Rabona BreakFast spokesperson.

83 As soon as Panenka and the Rabona representative hit the stage, chaos suddenly broke out in the
84 stands. Attached to this statement is the article I wrote for the *Daily Cynic* about what happened
85 after the chaos started. It was published in the newspaper the next day. Exhibit #5 is an
86 accurate copy of the article from the *Daily Cynic*.

WITNESS ADDENDUM

I have reviewed this statement and I have nothing of significance to add. The material facts are true and correct.

Signed,



SIGNED AND SWORN to before me at 8:00 a.m. on this day of this round of the 2019-2020 Nebraska State High School Mock Trial Competition.



Kristi Ann Flowers, Notary Public

My Commission Expires: December 31, 2019

Exhibit #1

**PAINT, POSTERS AND TOILET PAPER –
GOLDENROD TEENS CITED FOR ATTEMPTED
PROTEST AT PORKENHEIMER’S PIG FARM**

Goldenrod, NE - Five Goldenrod teenagers were cited for disturbing the peace in connection with an attempted protest at Porkenheimer’s Pig Farm. Police were called to Porkenheimer’s Industries on Friday evening, April 22, 2016. Upon arriving at Porkenheimer’s, the officers observed massive amounts of toilet paper surrounding the entrance gate to the facility. Officers also observed posters depicting feces and containing derogatory comments, which had been placed at the entrance of the Porkenheimer’s facility.

Porkenheimer’s security personnel provided the Goldenrod Police Department with surveillance video depicting the entrance to Porkenheimer’s Industries. Court records say the officers were able to determine the vehicle involved in the alleged vandalism from the surveillance video. The vehicle was stopped by officers later that evening and the five occupants were cited for disturbing the peace. The driver of the vehicle admitted his/her involvement to the investigating officer. Court documents say the teenagers’ actions were motivated by an attempt to protest the conditions for employees and livestock at Porkenheimer’s and the negative environmental impact from the operation of the facility. This publication does not publish the names of juveniles in connection with criminal matters.

Exhibit #2

Photo from Porckenheimer's website.



Photo from Police.



Exhibit #2 Continued

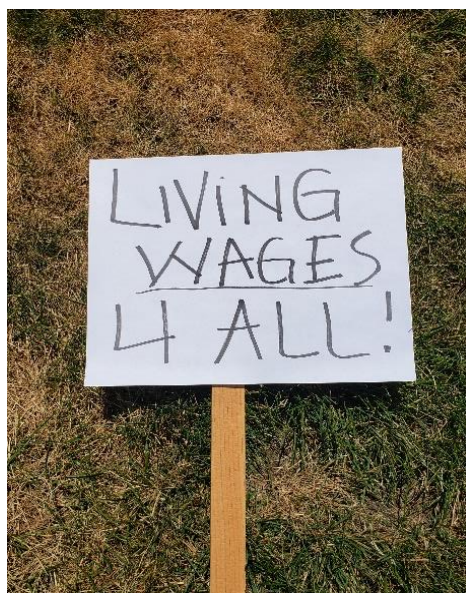
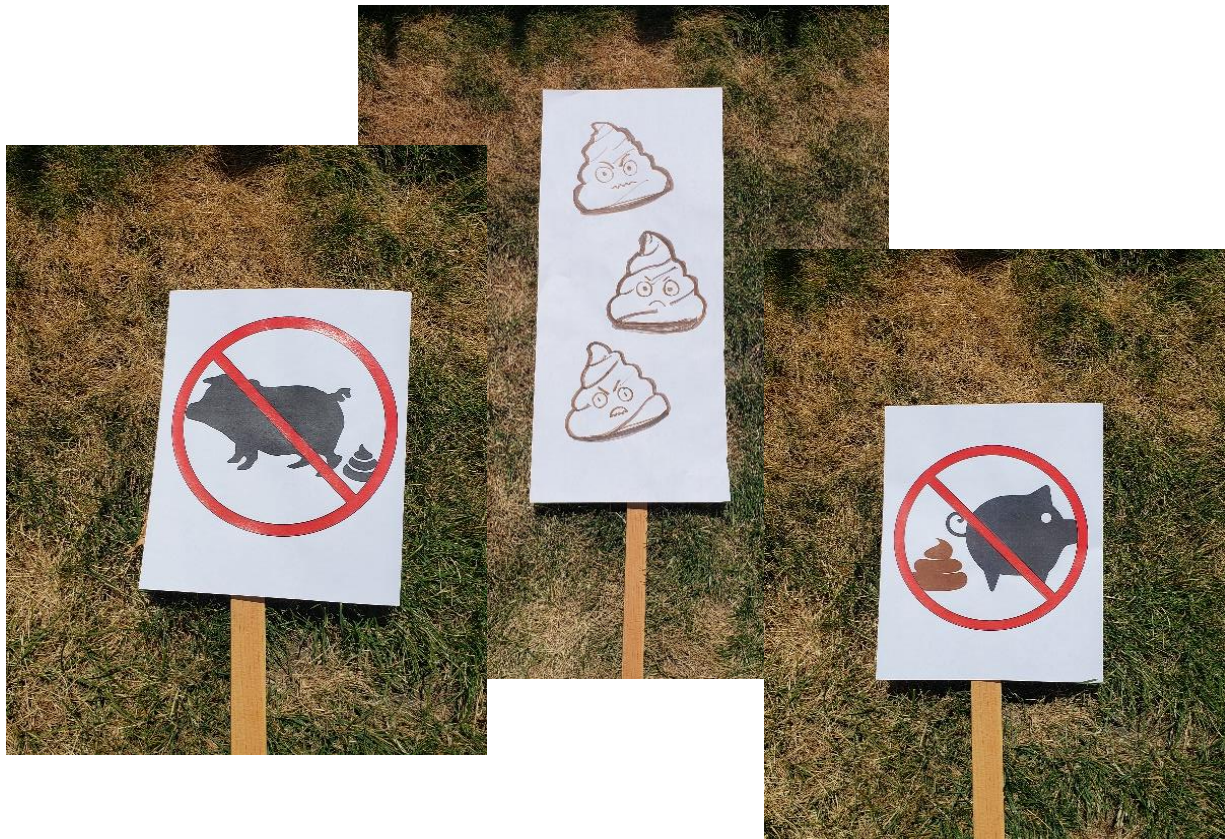


Exhibit #3

Endorsement Agreement

This Endorsement Agreement, dated as of May 1, 2018, (the "**Agreement**"), is entered into by and between Rabona Foods, a Nebraska Corporation, having its principal place of business at 2019 Mockingtrail Lane, Goldenrod, Nebraska. ("**Company**"), and Kelly Lindsey Panenka, an individual, residing at 1214 Kickapoo Rd., Goldenrod, Nebraska ("**Endorser**," and together with Company, the "**Parties**," and each a "**Party**").

WHEREAS, Endorser is recognized and widely known throughout the United States as a famous soccer player.

WHEREAS, Company is engaged in the manufacture, distribution and sale of food products, including breakfast cereals, granola bars and "BreakFast" breakfast drink, and wishes to promote their sale with the support of Endorser on the terms and subject to the conditions hereinafter provided.

1. **DEFINITIONS.** Capitalized terms have the meanings set forth or referred to in this Section 1.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Person.

"**Agreement**" has the meaning set forth in the preamble to this Agreement.

"**Company**" has the meaning set forth in the preamble to this Agreement.

"**Competitive Products**" means products that serve the same purpose as the Products or are otherwise deemed by potential buyers as being reasonable substitutes or replacements for the Products.

"**Confidential Information**" has the meaning set forth in Section 10.

"**Control**" (and with correlative meanings, the terms "Controlled by" and "under common Control with") means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.

"**Effective Date**" means the date set forth in the preamble to this Agreement.

"**Endorser**" has the meaning set forth in the preamble to this Agreement.

"**Endorsement**" means Endorser's approval and recommendation of the Products.

"**Endorser Identification**" means Endorser's name, nickname, voice, video or film portrayals, photograph, likeness, image and any other means by which Endorser may be recognized.

"**Governmental Authority**" means any federal, provincial, territorial, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority, or any arbitrator, court or tribunal of competent jurisdiction.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, award or determination entered by or with any Governmental Authority.

"Law" means any statute, law, ordinance, regulation, rule, code, constitution, treaty, common law, Governmental Order or other requirement or rule of law of any Governmental Authority.

"Party" and **"Parties"** have the meaning set forth in the preamble to this Agreement.

"Person" means any individual, partnership, corporation, trust, limited liability company, unincorporated organization, association, Governmental Authority or any other entity.

"Products" has the meaning set forth in the preamble to this Agreement.

"Term" has the meaning set forth in Section 9.1.

"Trademarks" means all rights in and to US and foreign trademarks, trade dress, brand names, logos, trade dress, corporate names and domain names, business names, and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals and extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world.

"Year" means each 12-month period beginning on the Effective Date.

2. ENDORSER'S EVALUATION OF PRODUCTS.

Endorser will conduct such evaluations and use as Endorser reasonably believes necessary to be satisfied that the Products are worthy of Endorser's use and recommendation. Company will provide Endorser, at no charge, with 100 bottles of "BreakFast" breakfast drink for Endorser's own use so that Endorser has the opportunity to meet its obligations under this Agreement.

3. GRANT OF ENDORSEMENT RIGHTS

3.1 Subject to the terms and conditions hereinafter set forth, Endorser hereby grants to Company and its Affiliates, during the Term and any extension thereof, the exclusive right and license to use the Endorser Identification and Endorsement solely in connection with the advertisement, promotion, distribution and sale of the Products within the Territory. Endorser represents and warrants that Endorser has not, either directly or indirectly, granted to any other Person, any of the rights granted to Company or its Affiliates hereunder, and Endorser will not grant any such rights to any other Person with respect to Competitive Products from and after the date of this Agreement through the date of expiration or termination of the Term.

3.2 Company shall have the right, at any time during the Term, to manufacture, have manufactured, market and sell commercial quantities of one or more of the Products bearing the Endorser Identification.

4. EXCLUSIVE USE OF THE PRODUCTS.

To facilitate and enhance Company's use of the Endorsement, Endorser shall:

4.1 Use the Products exclusively, and make no use of Competitive Products;

4.2 Make affirmative efforts to be seen using the Products when:

- (a) Participating in promotional activities in any media, including but not limited to a website, blog, tweet, or other social medium;
- (b) Taking part in photo shoots; or
- (c) Otherwise appearing in public.

4.3 Use his/her best efforts to promote the sale and use of the Products and promote the relationship between Endorser and Company.

5. ENDORSER'S RETENTION RIGHTS.

Subject to the provisions of Section 3 above, Endorser shall retain all rights in and to the Endorser Identification. During the Term or any renewal thereof, Endorser shall have the right to use or permit or license others to use the Endorser Identification and give his/her Endorsement to any product or service other than Competitive Products or to any related products. Endorser acknowledges that it is his/her intention to associate the Endorser Identification and Endorsement only with quality products.

6. APPROVAL OF ADVERTISING AND PROMOTIONAL MATERIALS: COPIES FOR ENDORSER.

6.1 At least ten (10) days before its release to the general public, Company shall submit to Endorser all advertising and promotional materials in which the Endorser Identification or Endorsement is included. Such advertising and promotional materials shall not be publicly released by Company without the prior approval of Endorser. Endorser shall not unreasonably withhold or delay approval of said materials and, in the absence of disapproval within seven (7) days of delivery thereof by Company, such advertising, and promotional materials shall be deemed approved by Endorser.

6.2 Company shall provide Endorser with a reasonable number of complimentary copies of all promotional and advertising materials which feature the Endorser Identification or include the Endorsement.

7. PROMOTIONAL APPEARANCES AND ADVERTISING: REIMBURSEMENT FOR EXPENSES

7.1 In each Year, Endorser shall be available at times and places reasonably convenient to Endorser and the Company, for up to five (5) hours on each of (a) five (5) days to make personal appearances on Company's behalf; (b) five (5) days to produce media content and television commercials on Company's behalf; and (c) five (5) days to pose for photographs and otherwise assist Company in the preparation of its advertising and/or promotional materials utilizing the Endorser Identification. Company's failure to fully utilize Endorser's services under this paragraph shall not result in the reduction in any consideration due hereunder and appearances may not be carried forward or backward from Year to Year.

7.2 Company shall make all required travel arrangements for Endorser's appearances under this Section and pay or reimburse Endorser for all reasonable expenses including first class airline tickets, hotels, meals and local transportation incurred by Endorser solely in connection with such appearances.

8. ENDORSER'S COMPENSATION

8.1 For the rights and benefits to be received by Company under this Agreement, Company shall pay to Endorser, an annual retainer in the amount of \$100,000.00 (One Hundred Thousand Dollars and Zero Cents).]

9. TERM, TERMINATION, AND SURVIVAL

9.1 The term of this Agreement will commence on the Effective Date and continue until the calendar anniversary thereof ("**Term**"), unless sooner terminated in accordance with the provisions of this Agreement.

9.2 Company shall have the right to terminate this Agreement at any time, effective immediately, on written notice to Endorser or, where applicable, his/her legal representative, on the occurrence of any of the following:

(a) Endorser's death.

(b) Endorser commits or is arrested for any crime or becomes involved in any situation or occurrence tending to bring Endorser into public disrepute, contempt, scandal, or ridicule or tending to shock, insult or offend the majority of the consuming public (or any protected class or group thereof) or tending to adversely affect or reflect on Company, Company shall have the right to immediately terminate this Agreement.

(c) Material breach by Endorser of any of the terms of this Agreement.

9.3 Endorser shall have the right to terminate this Agreement at any time, effective immediately, on written notice to Endorser, on the occurrence of any of the following:

(a) Company's failure to pay any undisputed amount when due to Endorser, where such failure continues for 60 days after Company receives written notice from Endorser of nonpayment.

(b) Material breach by Company of any of the terms of this Agreement, which breach is not cured by Company within 30 days after Company receives written notice from Endorser of the breach.

(c) Company becoming insolvent, filing a petition for bankruptcy or commencing, or having commenced against it, proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

9.4 Upon the termination of this Agreement, for any cause whatsoever, Company will immediately and completely cease using the Endorsement and shall not thereafter use or

refer to the Endorsement for advertising and promotional purposes whatsoever. Notwithstanding the foregoing sentence, Company may use its existing inventory of advertising and promotional materials incorporating the Endorsement for a period of 180 days after the date of such termination.

10. CONFIDENTIALITY.

All non-public, confidential or proprietary information of Company ("**Confidential Information**"), including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Company to Endorser, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential," in connection with this Agreement is confidential, solely for Endorser's use in performing this Agreement and may not be disclosed or copied unless authorized by Company in writing. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Endorser's breach of this Agreement; (b) is obtained by Endorser on a non-confidential basis from a third-party that was not legally or contractually restricted from disclosing such information; or (c) Endorser establishes by documentary evidence, was in Endorser's possession prior to Company's disclosure hereunder. Upon Company's request, Endorser shall promptly return all documents and other materials received from Company. Company shall be entitled to injunctive relief for any violation of this Section.

11. ENTIRE AGREEMENT.

This Agreement, including and together with any related exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

12. SEVERABILITY. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

13. WAIVER. No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

14. CUMULATIVE REMEDIES. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

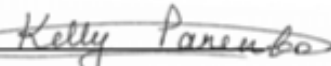
15. ASSIGNMENT. Endorser acknowledges that this is a personal services agreement and that s/he shall have no right to assign, transfer, delegate or subcontract any of his/her rights or obligations under this Agreement without the prior written consent of Company. Any purported assignment, transfer, delegation or subcontract in violation of this Section shall be null and void. No assignment, transfer, delegation or subcontract shall relieve Endorser of any of his/her obligations hereunder. Company may at any time assign, transfer, delegate or subcontract any or all of its rights or obligations under this Agreement without Endorser's prior written consent.

16. SUCCESSORS AND ASSIGNS. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

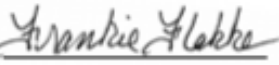
17. CHOICE OF LAW. This Agreement is governed by, and construed in accordance with, the laws of the State of Nebraska, United States of America, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of Nebraska.

IN WITNESS WHERE OF, the Parties hereto have executed this Agreement as of the Effective Date.

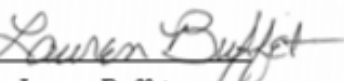
Kelly Lindsey Panenka, individually

By: 
Name: Kelly Lindsey Panenka

Rabona Foods, Inc.

By: 
Name: Frankie F. Flakke
Title: Chief Executive Officer, Rabona Foods, Inc

Lauren Buffet, Financial Advisor

By: 
Name: Laruen Buffet

Norman Borlaug, Soccer Coach

By: 
Name: Norman Borlaug

Exhibit #4



Exhibit #4 Continued



All-Star Game Turns into Rally for Protesters

Goldenrod, NE- What began as a typical All-Star Soccer game, complete with the guest appearance of soccer phenom and rising star Kelly Panenka, quickly turned into a night many will not forget.

Following a lopsided 8-3 win by the Blue team, which was led by Goldenrod High School sophomore TJ Jones, fans stuck around to watch the post-game ceremonies. Excitement in the stands grew as fans eagerly awaited Athlete of the Year Panenka to appear.

As Panenka took the stage for what many believed to be the last time as an amateur, s/he took the mic to thank the many coaches, fans, teachers and family that had supported her/him along the way. S/he then took off her club team jersey revealing a GNOMES jersey underneath while simultaneously donning a hat with the Rabona Foods logo and BreakFast emblazoned across the front. It was clear that s/he had decided to go pro and had an endorsement deal for BreakFast.

Representatives from Rabona Foods stood on the stage nearby in support of their new spokesperson.

Amidst the cheers of supportive fans, a swell of angry chants could be heard and a group of mostly students began to push toward the stage. "Just say NO to GMOs!" "Rabona Foods is selling out!" "BreakFast is a fake!" One of the loudest protesters, later identified as August Storm, was observed carrying a bucket with poison written on it toward the stage. Other protesters filled the bucket with a liquid that was later tossed on stage. It appeared to be Rabona's new product BreakFast. Other protesters threw empty BreakFast cans at the stage.

Officials quickly ushered Panenka off the stage. As Panenka left and walked toward Storm and the other protesters, this reporter asked her/him what s/he thought of the protest against the company. Panenka said "It doesn't affect me. I just want to play soccer." Panenka admitted that some of the

protesters were her/his friends but said that s/he doesn't pay attention when they "start talking about the environment." When asked if s/he would condemn their antics, s/he responded with "I don't know much about GMOs [sic], but know my friends are good people." S/he had no further comment before being whisked away.

Storm told this reporter that s/he wanted to bring attention to the "evils" of GMOs. "If it had to be done while my friend was on stage, so be it," Storm stated. Kelly is cool with my cause." When asked if that meant that Panenka knew what Storm and the other protesters were planning on doing, Storm only shrugged and winked.

Several people in the crowd who were interviewed stated that the protest had no impact on their views about Rabona Foods. One observer who declined to be named noted as he drank from a can of BreakFast, "They're just a bunch of stupid kids who think they know about how the world works. Their little protest means nothing." Another person in the crowd could be overheard stating, "I had no idea Rabona used GMOs. I'm not bringing that stuff into my home!"

Flakke, CEO of Rabona Foods, was given an opportunity to respond to this reporter's questions about the company's use of GMOs. Through her/his spokesperson, s/he stated "We stand behind our product and we stand behind Panenka."

UPDATE TO THIS STORY:

Shortly after this story was first reported, Rabona Foods attempted to cut ties with Kelly Panenka and cancel the BreakFast endorsement deal. A lawsuit has been filed in Goldenrod District Court. Both sides have refused to comment directing all questions to their respective legal counsel.

- Bobbie C. Woodstein

Exhibit #6

Rabona Foods
Corporate Spokesperson Interview Notes
Date: May 3, 2018

I arranged for an interview with Kelly Panenka in my office on May 1, 2018. Present were Mr./Ms. Kelly L. Panenka, her/his soccer coach, Coach Norman Borlaug and his/her financial adviser, Lauren Buffet. Kelly was not accompanied by either parent. I was informed that both work during the day and that Borlaug and Buffet could handle this interview.

I explained that the company was looking to retain her/him as a product spokesperson. When I explained the finances, s/he was kind of unimpressed. We discussed her/his scholastic experience. S/he is a high school graduate with essentially no extracurricular activities except soccer. S/he displayed a lot of energy. My normal protocol was used.

S/he was born and raised in Messi, Nebraska. S/He is an only child, self-described as "solo." S/He described her parents as ordinary but did not offer any explanation for his/her unique physical skills. Mr. Panenka was his/her coach for a while, but s/he passed by what he could teach pretty quickly. According to Kelly, his/her parents had the good sense to hire a development coach. His/her extracurricular activities and interests include soccer, soccer, and soccer.

S/He reported one minor police contact: Apparently, on or about April 22, 2016. Some of his/her friends, including August Storm, Lou A. Swain, Pat Kinney and Terry Gomes were arrested for holding a public demonstration without a permit, littering, criminal mischief and disturbing the peace. Kelly, who was there and apparently participating, might have been recognized by the investigating officer, but doesn't remember if s/he got a red card or not. Kelly admitted to getting some piece of paper from the officer, but she just gave it to her lawyer and never heard anything more about it. However, this event seems to have been an aberration for Kelly and not a pattern of misbehavior. I recommend that the contract include a morals and good behavior clause just in case.

When I asked about genetically modified organisms, s/he said s/he is not familiar with that topic at all and s/he is not particularly interested in politics. When I explained that the GMO debate is about science, s/he said, "Oh, I am not interested in that either."

S/He provided handles, passwords, and other access information so I could do a careful social media background check. This investigation disclosed that Kelly is big into soccer and always

has been. S/He has not initiated any controversial social media postings, or tweets, although s/he has retweeted and liked an odd collection of things sent by his/her online friends. I could perceive no pattern to the timing or content of these online activities.

S/He told me that s/he had a part time job coaching some high school soccer players. S/He quit coaching because "none of the local high school soccer players could perform at a level that made it worth her while to try to teach them anything. They would never be able to do what s/he can." Period. S/He did meet some decent athletes and some people who were nice, but they were mostly caught up in meaningless stuff, like protesting and throwing toilet paper.

I invited her/him to ask me questions about the remuneration and expectations associated with endorsing our corporation. S/He said it hardly matters because s/he will have several other offers in the next year or two, after s/he gets on the sports field.

I explained that s/he would be expected to make appearances at certain public activities, s/he would be expected to wear clothing with the company logo, and she would be expected to behave in a manner which never brought opprobrium on the company. S/He asked only what opprobrium means. His/her entourage asked a ton of questions.

When I asked about her/his social life, s/he was evasive. Most of his/her pals are soccer players, now. In the past, s/he hung out with some kids who were occasionally disruptive, but s/he said that was really not her thing. S/He just went along to be with the crowd.

I recommend the standard industry contract, with a one-year term, at an annual rate of \$100,000.00, plus expenses, with a good conduct clause. I recommend no stock options or bonuses be included at this time.

I recommend a photo shoot to determine whether Kelly is sufficiently photogenic and that a marketing study be done.

Submitted by

/s/

Rowen Rubisco
Marketing Director

Exhibit #7

Poll

FDA Poll

1. Gender

- Male
- Female
- Transgender
- Decline to Identify

2. What is your age?

- 17 or younger
- 18-20
- 21-29
- 30-39
- 40-49
- 50-59
- 60 or older

3. What is your highest level of education?

- None
- Some High School
- High School Graduate or GED
- Associate Degree
- Bachelor's degree
- Graduate Degree (Masters or Equivalent)
- Professional or Doctorate
- Other|

4. Which political party do you identify with?

- Democratic
 - Republican
 - Libertarian
 - Independent
 - Other
-

5. How would you rate your level of weekly activity? (1 being sedentary and 10 being very physically active/involved in fitness activity)

<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6	<input type="radio"/> 7	<input type="radio"/> 8	<input type="radio"/> 9	<input type="radio"/> 10
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6. How would you rate your level of interest in physical fitness? (1 being very low and 10 being very high)

<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6	<input type="radio"/> 7	<input type="radio"/> 8	<input type="radio"/> 9	<input type="radio"/> 10
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7. How many days per week do you eat breakfast?

<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6	<input type="radio"/> 7
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8. How many days per week do you eat lunch?

<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6	<input type="radio"/> 7
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9. How many days per week do you eat dinner?

<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6	<input type="radio"/> 7
-------------------------	-------------------------	-------------------------	-------------------------	-------------------------	-------------------------	-------------------------

10. Have you heard of Genetically Modified foods?

Yes No

11. How would you rate your knowledge of Genetically Modified foods? (1 being know nothing and 10 being know everything)

<input type="radio"/> 1	<input type="radio"/> 2	<input type="radio"/> 3	<input type="radio"/> 4	<input type="radio"/> 5	<input type="radio"/> 6	<input type="radio"/> 7	<input type="radio"/> 8	<input type="radio"/> 9	<input type="radio"/> 10
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12. How would you describe Genetically Modified foods?

<input type="text"/>

13. "A genetically modified organism is any organism whose genetic material has been altered using genetic engineering techniques" (thenongmoproject.org). After reading the preceding statement, do you understand what a Genetically Modified Organism (GMO) is?

Yes No

14. Do you believe the creation of GMOs is a dilemma that should be dealt with?

Yes No

15. How likely are you to purchase a **GMO** item from your local grocery store?

<input type="radio"/> Very Unlikely	<input type="radio"/> Unlikely	<input type="radio"/> Unsure	<input type="radio"/> Likely	<input type="radio"/> Very Likely
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16. To what extent do you agree with the following statements:

I believe that genetic modification takes away from the quality of an organism.

<input type="radio"/> Strongly Disagree	<input type="radio"/> Disagree	<input type="radio"/> Neutral	<input type="radio"/> Agree	<input type="radio"/> Strongly Agree
---	--------------------------------	-------------------------------	-----------------------------	--------------------------------------

I believe that without genetic modification, many of the products being sold today would STILL be as popular.

<input type="radio"/> Strongly Disagree	<input type="radio"/> Disagree	<input type="radio"/> Neutral	<input type="radio"/> Agree	<input type="radio"/> Strongly Agree
---	--------------------------------	-------------------------------	-----------------------------	--------------------------------------

17. Would you eat **Genetically Modified** foods?

Yes No Uncertain

18. Do you believe that there is an environmental risk to growing **Genetically Modified** foods in the United States? Please rate the extent of the risk (1 being no risk and 10 being very high risk)

Risk level	<input type="radio"/> Risk level 1	<input type="radio"/> Risk level 2	<input type="radio"/> Risk level 3	<input type="radio"/> Risk level 4	<input type="radio"/> Risk level 5	<input type="radio"/> Risk level 6	<input type="radio"/> Risk level 7	<input type="radio"/> Risk level 8	<input type="radio"/> Risk level 9	<input type="radio"/> Risk level 10
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19. Do you believe that there is a personal risk to eating **Genetically Modified** foods in the United States? Please rate the extent of the risk (1 being no risk and 10 being very high risk)

Risk level	<input type="radio"/> Risk level 1	<input type="radio"/> Risk level 2	<input type="radio"/> Risk level 3	<input type="radio"/> Risk level 4	<input type="radio"/> Risk level 5	<input type="radio"/> Risk level 6	<input type="radio"/> Risk level 7	<input type="radio"/> Risk level 8	<input type="radio"/> Risk level 9	<input type="radio"/> Risk level 10
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20. Do you believe that there is an economic risk to the sale of **Genetically Modified** foods in the United States? Please rate the extent of the risk (1 being no risk and 10 being very high risk)

Risk level	<input type="radio"/> Risk level 1	<input type="radio"/> Risk level 2	<input type="radio"/> Risk level 3	<input type="radio"/> Risk level 4	<input type="radio"/> Risk level 5	<input type="radio"/> Risk level 6	<input type="radio"/> Risk level 7	<input type="radio"/> Risk level 8	<input type="radio"/> Risk level 9	<input type="radio"/> Risk level 10
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21. Which of these statements regarding the potential risks and benefits to **Genetically Modified** foods in the United States do you agree with? (please tick all that apply)

- Farmers will benefit from the use of GM crops
 - GM food will make food cheaper in the United States
 - Farmers will lose independence if they use GM crops
 - We will not be able to ensure foods are GM free if GM crops are widely grown
 - We do not know enough about GM foods to safely consume them
-

22. Do you believe that Genetically Modified foods should be labeled?
(for example if you buy a product containing corn, would you like the corn to be listed as 'GM corn' in the ingredients list)

- Yes No

23. Which of these organizations do you trust to give accurate and reliable information concerning Genetically Modified foods? (please tick all that apply)

- United State Government
- World Health Organization (WHO)
- Farmers
- Biotechnology companies
- Newspapers and magazines
- Social media articles (circulated through Facebook etc.)
- Environmental charities (e.g. Greenpeace)
- Local authority
- Supermarkets
- Broadcast media (radio and TV)

24. Where have you read or seen information regarding Genetically Modified foods? (please tick all that apply)

- Newspapers or magazines
- Social media (Facebook, Twitter etc.)
- Blogs
- Friends and family
- Healthcare professional
- Academic publication
- Government publication
- Broadcast media (radio and TV)

25. Finally, please feel free to add any further comments, opinions, or statements regarding your views towards Genetically Modified foods.

Exhibit #8



Exhibit #9

- Rabona @ game w/ hats
- Kelly going pro
 - mascots doing a dance off?
 - Who is Bernie?
- Need to look up what offside is
- Corner kick - why?
- who would want to be goalie and get kicked @?

Next story ideas

- Bees - honey
- electric cars
- recycling
- Bike Lanes
 - community safety?



new
Bike light

grocery store:

- kool-aid!
- zesty powder • chicken
- cilantro • ginger • cardamom?
- lime • coco milk • jasmine rice

soccer
no idea what
score is

how long is a half?

what is off-side?



this is hard
to draw

GMO Questions

Break Fast - does it
taste good?

NEBRASKA HIGH SCHOOL MOCK TRIAL RULES

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I. RULES OF THE COMPETITION

The Rules of the Competition are based on the rules of the National High School Mock Trial Competition. There are some modifications specifically for Nebraska.

A. CODE OF ETHICAL CONDUCT FOR ALL PARTICIPANTS

The Rules of the Competition, as well as proper rules of the courthouse and courtroom decorum must be followed. In the event of a Rules violation, the Nebraska State Bar Foundation Board of Directors has created a Mock Trial Commission to handle these issues (see Rule 22).

Please follow a proper sense of fairness in the competition and understand that the Mock Trial Commission possesses the discretion to impose the appropriate sanctions. The sanctions may include but are not limited to disqualification, immediate exclusion from the competition, and the forfeiture of all awards for any misconduct occurring while a team is present for any level of competition.

All teams are responsible for the conduct of persons associated with their teams throughout any mock trial event. At all times, team members including a student news reporter, coaches and team supporters shall be bound by the CODE OF ETHICAL CONDUCT (CODE) and shall exhibit and act with civility, professionalism, integrity, honesty, and good sportsmanship in both victory and in defeat. Showing respect for fellow team members, coaches, supporters, opponents, judges, scoring panelists, volunteers, competition staff, volunteers and courthouse personnel is expected.

Teacher coaches, attorney coaches, and students are responsible for reading and understanding the Rules of the Competition and the CODE. All coaches have a special responsibility to know, follow and enforce the CODE and they shall discourage willful violations of the CODE. All coaches are reminded that they are in positions of authority and must serve as positive role models for the students. Coaches shall be responsible for educating team members and team supporters about the CODE and must encourage compliance with it. Students shall not willfully violate the Rules of the Competition and shall avoid tactics he, she or they know are wrong or that violate the rules.

All teacher and/or attorney coaches are encouraged to resolve any issues between the schools themselves.

Please sign the Code of Ethical Conduct form and submit it to the Bar Foundation office.

2019 Regional Competition Most Effective Attorney & Most Effective Witness Optional Opportunity

The Nebraska State Bar Foundation's Mock Trial Program encourages coaches to teach high school students about civility and good sportsmanship. Included in the Case Materials and on the Bar Foundation website is a "Most Effective Attorney Certificate" and a "Most Effective Witness Certificate." At the conclusion of each trial, student team members will have the opportunity to select two opposing team members and present a certificate to an attorney and a witness. Each team will need to print out and provide their own certificates to present at each trial.

B. THE PROBLEM

Rule 1. Rules

All trials are governed by the Nebraska High School Mock Trial Rules of the Competition, the Rules of Procedure, and the Federal Rules of Evidence (Mock Trial Version). Questions or interpretations of these rules are within the discretion of the Regional Coordinators, whose decisions are final. Any Post-Trial Objections (Rule 22) involving a Gross Rules Violation shall be decided by the Mock Trial Commission.

Rule 2. The Problem

The problem is an original fact pattern, which may contain any or all of the following: statement of facts, indictment, stipulations, witness statements/affidavits, jury charges, exhibits, etc. Stipulations may not be disputed at trial. Witness statements may not be altered.

Rule 3. Witness Bound by Statements

Each witness is bound by the facts contained in his/her own witness statement, the statement of facts, if present, and/or any necessary documentation relevant to his/her testimony.

- If, on direct examination, an attorney asks a question which calls for an invention of facts, the question is subject to objection under Rule 4.
- If, on cross-examination, an attorney asks a question which calls for an invention of facts, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit. The question is not subject to objection. See Rule 4 for further clarification.
- A witness is not bound by facts contained in other witness statements.

Rule 4. Invention of Facts

Inventions of facts are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. The purpose of this rule is to keep the case as even as possible by not allowing either side to create an advantage for their side by inventing facts. In real trials, this rule is not necessary because all of the facts are within the knowledge of the witnesses. Since mock trials use created fact situations, all of the necessary facts may not be within the knowledge of the witnesses. Therefore, for mock trials we need a rule to prevent inventions of facts that are not included in the case materials.

When an attorney objects to an invention of facts, the judge will rule in open court to clarify the course of further proceedings. The decision of the presiding judge regarding invention of facts or evidentiary matters is final.

Direct and Redirect Examination

Attorneys shall not ask questions calling for an invention of facts and witnesses shall not provide answers that involve an invention of facts. Attorneys for the opposing team may refer to Rule 4 in a special objection, such as: "Objection, Your Honor. The question calls for an invention of facts."

Cross and Recross Examination

An invention of facts may only be allowed on cross or recross examination and only if the question being asked calls for facts that are not included in the case materials. If a witness is asked a question calling for an invention of facts, the witness may respond:

1. "I do not know the answer to that question because that information is not contained in the Nebraska Mock Trial case materials." OR

2. With any answer which is consistent with the witness' affidavit and other substantive issues of the case.

An answer that is contrary to the witness' affidavit may be impeached.

Rule 5. Gender of Witnesses

All witnesses are gender neutral. The preferred pronoun of a witness should be indicated on the Team Roster. Any student may portray the role of any witness of either gender.

Rule 6. Voir Dire

Voir dire examination of a witness is not permitted. This is the preliminary questioning of a witness or juror to determine competency, prejudices, biases, or personal knowledge.

C. THE TRIAL

Rule 7. Team Eligibility

Each team competing in the Judge Lyle Strom High School Mock Trial Program must be composed of students who are registered in grades 9-12 in a Nebraska public, private or home school. Schools may enter as many teams as they can effectively organize and properly supervise. [Special permission may be granted for two schools to register a combined team. Contact the State Mock Trial Coordinator.] Exceptions on eligibility issues will be considered on a case-by-case basis.

A team that earns the right to compete at the State Championship shall be composed of the same students (including alternates) that participated at the Regional competition. If any student participant from the Mock Trial team is unable to compete and there are no alternates, another student may substitute for such participant as provided herein. The individual acting as the substitute must be enrolled as a student at the school and not have served on any other Mock Trial team at that school. Participation by an ineligible team member shall result in forfeiture of each trial in which the ineligible team member participated.

To participate in the competition, schools must register their teams by doing the following:

1. Complete and submit the Official Mock Trial Entry Form to the State Coordinator. This form is located on the Bar Foundation website at www.nebarfnd.org/law-related-education/mock-trial/mock-trial-2019. The form can be filled out via the google doc link or printed, completed and returned by fax, email or mail.
2. Submit the **Entry form** by Monday, September 13th, 2019, to avoid the \$100 late fee.
3. Submit the **\$50 PER TEAM** entry fee by Wednesday, September 25th, 2019, to avoid the \$100 late fee. The entry fee can be paid online via PayPal on the Bar Foundation Website or you can mail in a check made payable to the: **Nebraska State Bar Foundation**.
4. Submit your teams **SIGNED Code of Ethical Conduct** form by Wednesday, September 25th, 2019, to the State Coordinator.
5. Submit your Time/Date Preference form and school activities calendar for October and November to your **Regional Coordinator** by Wednesday, September 25th, 2019. You can find your Regional Coordinators information at the end of the case materials.

Rule 8. Team Composition

Teams may consist of a *minimum of six* and a *maximum of eight* students. Only **SIX** members may participate in any given trial. The duties of the two alternate team members may be assigned at the discretion of the coaches. Students may only participate on one team per school year. Student timekeepers may be provided, but are not considered "official timekeepers" unless so designated by the trial judge.

Rule 9. Team Presentation

Teams must be prepared to present both the Plaintiff and Defense sides of the case, using **SIX** team members per trial. For each trial, teams shall use three students as attorneys and three students as witnesses.

In the event of an emergency that would cause a team to participate with less than six members, the team must notify the Regional Coordinator as soon as possible. If the Regional Coordinator agrees that an emergency exists, he or she will decide whether the team will forfeit a trial or take appropriate measures to continue a trial round with less than six members. Trials may be rescheduled at the discretion of the Regional Coordinator. If the Regional Coordinator is unavailable, the presiding judge will make these decisions. A team proceeding with fewer than six team members may have points deducted from their point totals at the discretion of the scoring judges.

A team that forfeits a trial shall be given zero points, zero judges' ballots and a loss on their trial record. A team that was to have competed against a forfeiting team shall receive a win on their trial record.

The starting time of any trial may not be delayed longer than 15 minutes, unless agreed to by both teams and the presiding judge.

Rule 10. Team Duties

Each of the three attorneys shall conduct one direct examination and one cross examination. In addition, one attorney shall present the opening statement and a different attorney shall present the closing argument.

Opening Statements must be given by both sides at the beginning of the trial.

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

Each team must call three witnesses. Witnesses shall be called only by their own team. Witnesses shall be examined by both teams. Witnesses may not be recalled by either team.

Rule 11. Swearing In of Witnesses

Witnesses shall be sworn in, either individually or as a group, by the presiding judge, using the following oath:

"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 12. Trial Sequence and Time Limits

The trial sequence shall be as follows:

1. Prosecution/Plaintiff's opening statement
2. Defense's opening statement
3. Prosecution/Plaintiff's direct examination and Defense's cross-examination of Prosecution/Plaintiff's three witnesses
4. Defense's direct examination and Prosecution/Plaintiff's cross-examination of Defense's three witnesses
5. Prosecution/Plaintiff's closing argument
6. Defense's closing argument
7. Prosecution/Plaintiff may reserve a portion of its closing argument time for rebuttal if it does so at the beginning of its closing argument. The Prosecution/Plaintiff's rebuttal, if any, is limited to the scope of the Defense's closing argument.

Time Limits

1. Each team shall have a total of 10 minutes for the Opening Statement and Closing Argument. For example, a 3-minute opening and a 7-minute closing.
2. Each team shall have a total of 25 minutes for Direct and Redirect Examination.
3. Each team shall have a total of 20 minutes for Cross and Recross Examination.

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, except as allowed by this rule.

Rule 13. Timekeeping

Time limits are mandatory and shall be enforced by the presiding judge. Time for objections, extensive questioning from the judge, or administering the oath shall NOT be counted as part of a team's allotted time. Time does not stop for introduction of exhibits. Each team may have its own timekeeper for the benefit of the team.

Placement of Timekeepers - Non-participating team members serving as the timekeeper(s) and/or the videographer may sit in the first row of the jury box if space allows. Timekeepers shall not sit by the performance judges and shall not look at any score sheets. Each team's timekeeper(s) shall sit beside the competing team's timekeeper(s). A student not serving as a timekeeper or videographer is prohibited from sitting in the jury box.

Both timekeepers will hold up time cards and record timing for all competitors (e.g. when the prosecution/plaintiff is making opening arguments, both their timekeeper and the opposing team's timekeeper hold up time cards). Time cards can be found on the Bar Foundation website at www.nebarfnd.org/law-related-education/mock-trial/mock-trial-2019.

Students shall use a traditional stopwatch (no cell phone or electronic device may be used) to time the trial.

No time disputes will be entertained after the trial concludes. The decisions of the presiding judge regarding the resolution of time disputes are final except for Rule 22.

Rule 14. 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 presiding judge, the scoring judges may determine individually whether or not to deduct points in a category because of the overrun in time.

Rule 15. Prohibited Motions

The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission. Other motions, for example, a motion for directed verdict, acquittal, or dismissal of the case at the end of the Plaintiff's case, may not be used. A motion for a recess may be used only in the event of an emergency or before closing arguments. Should a recess be called, team members are to remain in place and shall not communicate with any observers, coaches, or instructors regarding the trial.

Rule 16. Sequestration

Teams may not invoke the rule of sequestration of witnesses (exclusion of witnesses from the courtroom).

Rule 17. Bench Conferences

Bench conferences may be granted at the discretion of the presiding judge, but should be made from the counsel table in the educational interest of handling all matters in open court.

Rule 18. Supplemental Material/Illustrative Aids

During the trial teams may refer only to materials included in the mock trial case packet. No physical evidence, illustrative aids, enlargements, props or costumes are permitted unless authorized specifically by the State Coordinator.

Rule 19. Trial Communication

Teacher coaches, attorney coaches, non-participating team members (the two alternates), and observers shall not talk to, signal, communicate with, or coach their teams during trial. Team members (defined as the three student attorneys and three student witnesses) participating in the trial may, among themselves, communicate during the trial; however, no disruptive communication is allowed.

Signaling of time by the teams' timekeeper(s) shall not be considered a violation of this rule. Timekeeper(s) may verbally communicate the remaining time to their teammates during a recess.

Teacher coaches, attorney coaches, and observers must remain outside the bar in the spectator section of the courtroom.

This rule remains in force during any recess that may occur.

Rule 20. Viewing a Trial

Local and Regional Trials

Check with the Regional Coordinator for your county regarding persons not associated with the competing teams viewing a trial. Regional Coordinators may choose one of the following options:

- A. All trials are open to the public. Trials may be videotaped only by the competing schools or local media, OR

- B. Only team members, alternates, attorney coaches, teacher coaches, observers or other persons directly associated with the competing teams may view a trial. Videotaping is allowed only by the competing teams IF both teams agree to permit it.

State and National Championships

Team members, alternates, attorney-coaches, teacher-sponsors, and any other persons directly associated with a mock trial team, except those authorized by the State Coordinator or the National Board, are not allowed to view other teams in competition, so long as their team remains in the competition.

Rule 21. Videotaping/Photography

Local and Regional Trials -- See Rule 20.

State and National Championships -- Any team has the option to refuse participation in videotaping, tape recording, still photography, or media coverage, except that media coverage will be allowed by the two teams in the State Championship round. A video release form must be completed for each student at the State Championship.

Rule 22. Post-Trial Objection

Appeals are not permitted *per se*; however, any errors/violations are handled in the following manner:

- A. After closing arguments are completed, and the scoring judges have been excused to begin deliberation, the presiding judge will ask, *“Does either team have serious reason to believe that a material violation of any rule has occurred during this trial? I will remain on the bench for three (3) minutes, during which time any protest or objection may be brought to my attention by a team attorney. The team attorneys may communicate only with performing team members (witnesses and timekeeper) involved in this round. Team attorneys shall not communicate in any way with teacher and/or attorney coaches, or observers.”*

1: Motions for directed verdict or dismissal of the case are not permitted.

2: Objections that could have been raised during the trial, including evidentiary objections may not be raised at this time.

If **no** objection is made within three minutes, the presiding judge will retire to the chambers.

If there is an objection, then one of the team attorneys will stand and state the objection(s) and the grounds for it. The judge **shall** solicit a response from the other team and/or inquire further into the facts. All objections must be made before the presiding judge retires for scoring.

The presiding judge **does not** announce a finding but retires to consult with the performance judges, the Regional Coordinator or NSBF staff.

- B. Material Rule Violation - If a majority of the judging panel determines that there has been a material violation of the competition rules that affected the fairness of the trial, five (5) points shall be deducted from the offending team’s total score on each scoresheet. An example of a material rule violation would be a team going over their time-limit for closing arguments by more than 15 seconds without prior permission of the presiding judge to do so.

- C. Gross Rule Violation- In the event the team raises a violation that the majority of the judging panel believes is more serious than a five-point violation, the student attorneys are asked to describe the issue in as much **written detail as possible on the Gross Rule Violation Form**. The Gross Rule Violation Form is included in the Case Materials and on the Bar Foundation website. An example of a gross rule violation would be communication between team members and their teacher or attorney coach, whether through signals, notes, or electronically.

Gross Rule Violations are referred to the **Nebraska State Bar Foundation's Mock Trial Commission**, which is comprised of seven mock trial volunteers (no active attorney coaches). The Commission is sent all of the details, and asked to construct an appropriate remedy, up to and including disqualification.

- D. ALL DECISIONS FROM THIS PROCESS ARE FINAL AND NOT SUBJECT TO ANY FURTHER APPEAL.

- E. No Power Matching nor scoring adjustments (miscalculation on a scoresheet) are subject to any appeal.

D. JUDGING

Rule 23. Decisions

All decisions of the judging panel are FINAL with the exception of a violation that falls under Rule 22.

Rule 24. Composition of Judging Panel

The judging panel shall consist of one presiding judge and two scoring judges, all of whom shall complete individual score sheets. No mock trial shall proceed without three judges, unless one mock trial judge is unavoidably, unexpectedly absent. [Contact your Regional Coordinator if a mock trial judge is absent.]

If one mock trial judge is unavoidably, unexpectedly absent, the other two judges may proceed to score the trial and determine a winner by mutual agreement. If the two judges cannot agree on a winner, then the two teams shall retry the case at a mutually agreeable later date. Any mock trial with less than two judges shall be rescheduled by the two participating schools at a mutually agreeable later date.

The State Championship trial may have a panel of five to seven jurors (mock trial judges) at the discretion of the State Coordinator.

Rule 25. Score Sheets/Ballots

The term "ballot" will refer to the score sheets and the decision made by a presiding or scoring judge as to which team made the best presentation in the trial. The term "score sheet" is the form on which team points are recorded. Score sheets are to be completed individually by all three judges. Scoring judges are not bound by the rulings of the presiding judge. The team that earns the highest points on an individual judge's score sheet is the winner of that ballot. The team that receives the majority of the three ballots wins the trial.

Each Regional Coordinator has the discretion to determine whether or not teams receive copies of the score sheets: 1) after each trial or 2) at the conclusion of the Regional Competition.

During the State Championship, Nebraska follows the National High School Mock Trial Championship Power Matching as modified for the 12 teams participating at State. Power Matching considers the following: 1) win/loss record, 2) number of ballots received for each trial and 3) points.

Rule 26. Courtroom Decorum

Mock trials are meant to simulate real trials in a courtroom atmosphere. Participants should act and dress accordingly. Check with your Regional Coordinator for guidelines.

Rule 27. Pre-trial Conferences

Each mock trial should begin with a pretrial conference held in open court with all participants, coaches and spectators present. Mock trial attorneys may ask the presiding judge to mark exhibits and clarify rules of procedure or rules of evidence. Team Roster forms should be presented to all three judges.

E. DISPUTE RESOLUTION

Rule 28. Reporting a Rule Violation/Inside the Bar

Alleged rule violations that involve students competing in a trial and occur during the trial should be brought to the attention of the presiding judge by a student attorney through an objection at the time of the alleged violation. The presiding judge shall rule on the objection and the trial shall continue. *Any alleged rule violation known, or through the exercise of reasonable diligence which should have been discovered during the trial and is not brought to the attention of the presiding judge during the three (3) minute Post-Trial Objection time period detailed in Rule 22 is herein, forever waived and cannot be addressed at any time in the future.*

If an alleged material rule violation could not reasonably have been discovered until after the trial has concluded, the alleged violation should be brought to the attention of the presiding judge immediately at the conclusion of the trial. See Rule 22. The scoring judges will be excused from the courtroom and the presiding judge will provide the student attorney with a dispute resolution form on which the student will record in writing the nature of the alleged rule violation. The student attorney may communicate with co-counsel and student witnesses before preparing the form.

At no time in this process may teacher or attorney coaches or observers communicate with the students.

Rule 29. Dispute Resolution Procedure

The presiding judge will review the written dispute resolution form and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record the reasons for this, announce his/her decision in open court, retire to complete his/her score sheet. Both the dispute resolution form and the score sheets will be given to the Regional Coordinator or his/her designee.

If the presiding judge feels the grounds for the dispute merit a hearing, the form will be given to opposing counsel for their written response. After opposing counsel has recorded their response and given it to the judge, the judge will ask each team to designate a spokesperson. After the spokespersons have had three (3) minutes to prepare their arguments, the judge will conduct a hearing on the dispute. Each team's spokesperson has three (3) minutes for a presentation and they may be questioned by the judge.

At no time in this process may teacher coaches, attorney coaches or observers communicate with the students. After the hearing the presiding judge will retire to consider his/her ruling on the dispute. The written decision will be recorded on the dispute resolution form, with no further announcement.

Rule 30. Reporting of Alleged Rule Violation /Outside the Bar

Disputes that involve people other than student team members and occur outside the bar during a trial round may be brought exclusively by the teacher or attorney coaches. Such disputes must be made promptly to the appropriate Regional Coordinator who will ask the complaining party to complete a dispute resolution form. The completed form will be given to the Regional Coordinator. The Regional Coordinator will then (a) notify all pertinent parties; (b) allow time for a response, if appropriate; and (c) rule on the complaint. The Regional Coordinator will notify all pertinent parties of the decision.

II. RULES OF PROCEDURE

The Nebraska Rules of Procedure are based on the Rules of the National High School Mock Trial Competition.

A. BEFORE THE TRIAL

Regional Coordinators will schedule trials once the school activities forms are completed by the individual teams. Twelve teams from each region will compete at the state championship.

Rule 31. Courtroom Setting

The Plaintiff/Prosecution team shall be seated closest to the jury box. No team shall rearrange the courtroom without prior permission of the judge.

Rule 32. Team Roster

Before beginning a trial, the teams must exchange copies of the Team Rosters. The form shall identify the gender of each witness so that references to such parties shall be made using the preferred pronoun. Copies of the Team Rosters shall be made available to all three judges during the pretrial conference. A copy of the Team Roster shall be provided to the Regional Coordinator at the start of the regional competition.

Rule 33. Stipulations

The attorney assigned the Prosecution/Plaintiff's opening statement shall offer any stipulations into evidence prior to beginning the opening statement.

Rule 34. The Record

The stipulations, indictment and charge to the jury shall not be read into the record.

B. BEGINNING THE TRIAL

Rule 35. Jury Trial

The case shall be tried to a jury; arguments are to be made to judge and jury. Teams may address the scoring judges as the jury.

Rule 36. Standing During Trial

Based on the Rule 4.16 of the National High School Mock Trial Competition Rules all attorneys shall stand when addressing the court or the jury, including opening statements, closing arguments, direct and cross-examination, and for the making of objections. Direct and cross-examination may be conducted from counsel table, a podium, or with leave of the court, from any place in the well of the court. Counsel shall obtain permission from the Court before approaching a witness.

Rule 37. Objection During Opening Statement/Closing Argument

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

If a team believes an objection would have been proper during the opposing team's closing argument, one of its attorneys may, following the closing argument, raise his/her hand to be recognized by the judge and 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 shall not rule on this "objection." Judges shall weigh the "objection" individually for purposes of determining their scores. No rebuttal by opposing team shall be heard.

C. PRESENTING EVIDENCE

Rule 38. Argumentative Questions

An attorney shall not ask argumentative questions. However, the Court may, in its discretion, allow limited use of argumentative questions on cross-examination.

Rule 39. Lack of Proper Predicate/Foundation

Attorneys shall lay a proper foundation prior to moving for the admission of evidence. After motion has been made, the exhibits may still be objected to on other grounds.

Rule 40. Procedure for Introduction of Exhibits

As an example, the following steps effectively introduce evidence.

1. All evidence shall be pre-marked as exhibits.
2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. "Your honor, may I approach the bench to show you what has been marked as Exhibit No. ___?"
3. Show the exhibit to opposing counsel.
4. Ask for permission to approach the witness. Give the exhibit to the witness. "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?"
Witness answers with identification only.
6. Offer the exhibit into evidence. "Your Honor, we offer Exhibit No. ___ into evidence at this time. The authenticity of this exhibit has been stipulated."
7. Presiding Judge: "Is there an objection?"
If proper foundation has not been laid, opposing counsel should object at this time.
8. Opposing Counsel: "No, your Honor," or "Yes, your Honor proper foundation has not been laid for Exhibit No. ___."
9. Presiding Judge: "Is there any response to the objection?"
10. Presiding Judge: "Exhibit No. ___ is/is not admitted."

Rule 41. Use of Notes/Exhibits

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial. Attorneys may consult with each other at counsel table verbally or through the use of notes. The use of laptops or other electronic devices is prohibited.

Exhibit Binders: Teams may prepare a binder of some or all of the exhibits, but at no time during the trial shall the binder be left on or near the witness stand. If an exhibit is admitted into evidence, only the copy of the exhibit authenticated by the witness and admitted by the presiding judge shall be used in evidence. Teams shall use only the exhibit actually admitted into evidence for the duration of the trial, including

publication to the jury, during further testimony by any witness, and during closing argument. Exhibits may not be enhanced or enlarged without permission from the State Coordinator. No protective covering (i.e. lamination) of paper exhibits is allowed.

Rule 42. Redirect/Recross

Redirect and recross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Federal Rules of Evidence (Mock Trial Version).

D. CLOSING ARGUMENTS

Rule 43. Scope of Closing Arguments

Closing arguments must be based on the actual evidence and testimony presented during the trial.

E. WRITTEN FEEDBACK

Rule 44. Optional Feedback Form for Volunteer Judges

Attached to the Case Materials is an Optional Feedback Form for members of the judging panel to complete and give to the Regional Coordinator. Judges may also complete this form online at <https://forms.gle/n75A2rq4hzkdd76t9> or find the link on the Bar Foundation website.

Judges shall **not** inform the students of the score sheet results.

Rule 45. Proposed Suggestion Form for Teacher and Attorney Coaches

The Proposed Suggestion Form can be found in the case materials and on the Bar Foundation website. This is only available to teacher and/or attorney coaches. This form must be submitted to the Nebraska State Bar Foundation's Executive Director. Coaches should describe the proposed suggestion in a maximum of 100 words. The suggestion(s) will be carefully considered and brought before the Mock Trial Commission. Based upon the Commission's recommendation, the suggestion is either accepted or denied. All suggested Rule changes will most likely be considered over the summer.

III. FEDERAL RULES OF EVIDENCE (Mock Trial Version)

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 judge will probably allow the evidence. The burden is on the mock trial team to know the Nebraska 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 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 Nebraska High School Mock Trial Rules of Evidence govern Nebraska High School Mock Trial competition.

ARTICLE I. GENERAL PROVISIONS

Rule 101. Scope

These National High School Mock Trial Rules of Evidence govern the trial proceedings of the National High School Mock Trial Championship.

Rule 102. Purpose and Construction

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

ARTICLE IV. RELEVANCY AND ITS LIMITS

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

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

Rule 402. General Admissibility of Relevant Evidence

Relevant evidence is admissible unless these rules provide otherwise. Irrelevant evidence is not admissible.

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

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

Rule 404. Character Evidence; Crimes or Other Acts

- (a) Character Evidence.
 - (1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.
 - (2) Exceptions for a Defendant or Victim in a Criminal Case. The following exceptions apply in a criminal case:
 - (A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;
 - (B) a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:
 - (i) offer evidence to rebut it; and
 - (ii) offer evidence of the defendant's same trait; and
 - (C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.
 - (3) Exceptions for a Witness. Evidence of a witness's character may be admitted under Rules 607, 608, and 609.
- (b) Crimes, Wrongs, or Other Acts.
 - (1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
 - (2) Permitted Uses. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Rule 405. Methods of Proving Character

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

Rule 406. Habit, Routine Practice

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

Rule 407. Subsequent Remedial Measures

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

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

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

Rule 408. Compromise Offers and Negotiations

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

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

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

Rule 409. Offers to Pay Medical And Similar Expenses

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

Rule 410. Pleas, Plea Discussions, and Related Statements

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

- (1) a guilty plea that was later withdrawn;
- (2) a nolo contendere plea;
- (3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or
- (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

(b) **Exceptions.** The court may admit a statement described in Rule 410(a)(3) or (4):

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

Rule 411. Liability Insurance (*civil case only*)

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

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. Need for Personal Knowledge

A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703. (*See Rule 2.2*)

Rule 607. Who May Impeach A Witness

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

Rule 608. A Witness's Character For Truthfulness or Untruthfulness

- (a) **Reputation or Opinion Evidence.** A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.
- (b) **Specific Instances of Conduct.** Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:
 - (1) the witness; or
 - (2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

Rule 609. Impeachment by Evidence of a Criminal Conviction

- (a) **In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:
 - (1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
 - (A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and
 - (B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and
 - (2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving — or the witness's admitting — a dishonest act or false statement.
- (b) **Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect.
- (c) **Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:
 - (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or
 - (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.
- (d) **Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:
 - (1) it is offered in a criminal case;
 - (2) the adjudication was of a witness other than the defendant;
 - (3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and
 - (4) admitting the evidence is necessary to fairly determine guilt or innocence.
- (e) **Pendency of an Appeal.** A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

Rule 610. Religious Beliefs or Opinions

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

Rule 611. Mode and Order of Interrogation and Presentation

- (a) **Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:
 - (1) make those procedures effective for determining the truth;

- (2) avoid wasting time; and
- (3) protect witnesses from harassment or undue embarrassment.
- (b) **Scope of cross examination.** The scope of the 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 and admissible.
- (c) **Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:
 - (1) on cross-examination; and
 - (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.
- (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 examination. Likewise, additional questions may be asked by the cross examining attorney or re-cross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.
- (e) **Permitted Motions.** The only motion permissible is one requesting the judge to strike testimony following a successful objection to its admission.

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

If a written statement is used to refresh the memory of a witness either while testifying or before testifying, the Court shall determine that the adverse party is entitled to have the writing produced for inspection. The adverse party may cross examine the witness on the material and introduce into evidence those portions, which relate to the testimony of the witness.

Rule 613. Witness's Prior Statement

- (a) **Showing or Disclosing the Statement During Examination.** When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.
- (b) **Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY

Rule 701. Opinion Testimony by Lay Witness

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

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

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 703. Bases of an Expert's Opinion Testimony

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

Rule 704. Opinion on Ultimate Issue

- (a) **In General — Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue.
- (b) **Exception.** In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

Rule 705. Disclosing the Facts or Data Underlying An Expert's Opinion

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

ARTICLE VIII. HEARSAY

Rule 801. Definitions

The following definitions apply under this article:

- (a) **Statement.** "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.
- (b) **Declarant.** "Declarant" means the person who made the statement.
- (c) **Hearsay.** "Hearsay" means a statement that:
 - (1) the declarant does not make while testifying at the current trial or hearing; and
 - (2) a party offers in evidence to prove the truth of the matter asserted in the statement.
- (d) **Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:
 - (1) **A Declarant-Witness's Prior Statement.** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:
 - (A) is inconsistent with the declarant's testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
 - (B) is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or

- (C) identifies a person as someone the declarant perceived earlier.
- (2) **An Opposing Party's Statement.** The statement is offered against an opposing party and:
 - (A) was made by the party in an individual or representative capacity;
 - (B) is one the party manifested that it adopted or believed to be true;
 - (C) was made by a person whom the party authorized to make a statement on the subject;
 - (D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or
 - (E) was made by the party's coconspirator during and in furtherance of the conspiracy.

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

Rule 802. Hearsay Rule

Hearsay is not admissible except as provided by these Rules.

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

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

- (1) **Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.
- (2) **Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.
- (3) **Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.
- (4) **Statement Made for Medical Diagnosis or Treatment.** A statement that:
 - (a) is made for — and is reasonably pertinent to — medical diagnosis or treatment; and
 - (b) describes medical history; past or present symptoms or sensations; their inception; or their general cause.
- (5) **Recorded Recollection.** A record that:
 - (a) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;
 - (b) was made or adopted by the witness when the matter was fresh in the witness's memory; and
 - (c) accurately reflects the witness's knowledge.

If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.
- (6) **Records of 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) **Absence of Regularly Conducted Activity.** Evidence that a matter is not included in a record described in paragraph (6) if:

- (a) the evidence is admitted to prove that the matter did not occur or exist;
- (b) a record was regularly kept for a matter of that kind; and
- (c) the opponent does not show that the possible source of information or other indicated a lack of trustworthiness.

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

- (a) it sets out:
 - (i) the offices activities;
 - (ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law enforcement personal; or
 - (iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and
- (b) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

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

- (a) the record or statement does not exist; or
- (b) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

(16) **Statements in Ancient Documents.** A statement in a document that is at least 20 years old and whose authenticity is established.

(18) **Statements in Learned Treatises, Periodicals, or Pamphlets.** A statement contained in a treatise, periodical, or pamphlet if:

- (a) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and
- (b) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

(21) **Reputation Concerning Character.** A reputation among a person's associates or in the community concerning the person's character.

(22) **Judgment of a Previous Conviction.** Evidence of a final judgment of conviction if:

- (a) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;
- (b) the conviction was for a crime punishable by death or by imprisonment for more than a year;
- (c) the evidence is admitted to prove any fact essential to the judgment; and
- (d) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

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

Rule 804. Hearsay Exceptions, Declarant Unavailable

- (a) **Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant:
- (1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;
 - (2) refuses to testify about the subject matter despite a court order to do so;
 - (3) testifies to not remembering the subject matter;
 - (4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or
 - (5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:
 - (A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or
 - (B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

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

- (b) **The Exceptions.** The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:
- (1) **Former Testimony.** Testimony that:
 - (A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and
 - (B) is now offered against a party who had — or, in a civil case, whose predecessor in interest had — an opportunity and similar motive to develop it by direct, cross-, or redirect examination.
 - (2) **Statement Under the Belief of Imminent Death.** In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.
 - (3) **Statement Against Interest.** A statement that:
 - (A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and
 - (B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.
 - (4) **Statement of Personal or Family History.** A statement about:
 - (A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

- (B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.
- (5) **Not Applicable**
- (6) **Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.**
A statement offered against a party that wrongfully caused — or acquiesced in wrongfully causing — the declarant's unavailability as a witness, and did so intending that result.

Rule 805. Hearsay within Hearsay

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

ARTICLE XI. OTHER

Rule 1103. Title

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



OFFICIAL TEAM ROSTER FORM

Team Rosters shall be given to opposing counsel and the three (3) judges during the pretrial conference. The Roster shall identify the gender of each witness and the preferred pronoun. At the conclusion of each trial, the presiding judge shall give a copy of each team's roster to the Regional Coordinator or his/her designee. **Changes in a team's roster**

are prohibited after the first round of the regional competition. Contact your Regional Coordinator if there are questions.

School Name		Team Color or #	
Student Attorneys			
During this trial our team will be representing the (circle one):		Plaintiff/ Prosecution	Defense
Student Witnesses			
Student Name	Direct Examination	Cross Examination	Other
Student Alternates			
1:	2:		

Teacher Coach(es): _____

Attorney Coach(es): _____

Signature of Coaches(s): _____

TRIAL SCORING & DEDUCTION OF POINTS

TRIAL SCORING: Winners are determined by which team earns the most judges' ballots (score sheet). A Mock Trial team has the opportunity to receive three (3) ballots during each trial. The presiding judge and the two (2) performance judges all complete a ballot. Do NOT add the two performance judges' team totals together to determine the trial winner.

Each of the performance judges should total their scores separately. If an individual judge's team totals are the same for both teams, that judge shall indicate on the line - ***If my total scores are tied, the win goes to "X"***, which of the teams s/he feels gave the best overall performance. The team which earns the greatest number of points on a judge's score sheet (or receives the judge's vote if the numbers were tied) wins that judge's ballot. **TO WIN A TRIAL, A TEAM MUST WIN AT LEAST TWO JUDGES' BALLOTS.**

In other words, if each of the performance judges has awarded the greatest number of points to the same team, that team is the winner. If the performance judges have made a "split" decision (i.e., each awarded the most points to a different team) then the presiding judge's ballot will determine the winner based on which team gave the best overall performance.

Example A:

Judge Smith's:	Team #1	<u>83</u> points &	Judge Jones'	Team #1	80 points &
score sheet shows:	Team #2	<u>76</u> points	score sheet shows:	Team #2	<u>78</u> points

In Example A, **Team #1 is the clear winner** because both performance judges gave them a greater number of points than the judges gave to Team #2 -- 83 and 80 versus 76 and 78.

Example B:

Judge Smith's:	Team #1	<u>83</u> points &	Judge Jones'	Team #1	<u>79</u> points &
score sheet shows	Team #2	<u>76</u> points	score sheet shows:	Team #2	<u>80</u> points

In Example B, Judge Smith has chosen Team #1 as the winner. Judge Jones has chosen Team #2 as the winner. Even though one team has more total points than the other, it is the number of judges' ballots **NOT** the total points which determines a trial winner. Therefore, this is a situation in which the performance judges have given a "split" decision. The presiding judge must determine the winner based upon overall team performance. In example B the team which earns the presiding judge's vote/ballot is the trial winner.

DEDUCTION OF POINTS: Performance judges may, at their discretion, consider subtracting points from an individual's score because of rule violations. For example, if a team violates its time limits, the performance judges **MAY** decide to reduce the points.

Performance judges may wish to deduct points brought to the judges' attention during a dispute resolution (see Rules 22 and 28-30).

Whatever rule violations are brought to the attention of the judges, it is entirely within the judges' discretion whether or not they will deduct points from any participant's score. The decision of the judges is final.

Nebraska follows the National High School Mock Trial Championship Power Matching as modified for the 12 teams at the State Championship. Rankings are determined by 1) win/loss record, 2) total number of ballots received and 3) cumulative points.



PRESIDING JUDGE'S SCORE SHEET

Date: _____

Round #: _____

Plaintiff/Prosecution: _____ Defense: _____
(School Name) (School Name)

Determine which team gave the best overall performance. Your decision is independent of the performance judges.

The presiding judge's scoresheet and the two performance judges' scoresheets are used in the Power Matching to determine a team's ranking.

The criteria for BEST OVERALL PERFORMANCE are, among other things, whether ALL team members:

- complied with all rules of the competition and spirit of fair play;
- were poised and spoke clearly and distinctly;
- observed courtroom decorum;
- used their time effectively and stayed within the time limits; and
- were courteous of their opponent.

PERFORMANCE EVALUATION

The team that gave the BEST OVERALL PERFORMANCE is the:

CIRCLE ONE: **Plaintiff/Prosecution** OR **Defense**

COMMENTS (optional):

Judge's Signature

Date

Please print name



PERFORMANCE JUDGE'S SCORE SHEET

P = Plaintiff/Prosecution _____
(School Name & color/#)

D = Defense _____
(School Name & color/#)

Round: _____ **Court Room:** _____

On a scale of 1 to 10, as outlined below, rate each team's performance in each of the 12 scoring categories.

Ineffective	Fair	Average	Excellent	Superior
1-2	3-4	5-6	7-8	9-10

PLEASE DO NOT: 1 – Leave any categories blank; 2 – Give any scores of zero; 3 – Use Fractions

P		D	
Opening Statement		Opening Statement	
Plaintiff/Prosecution			
First Plaintiff/Prosecution Witness	Attorney Direct Examination		Attorney Cross Examination
	Witness Performance		
Second Plaintiff/Prosecution Witness	Attorney Direct Examination		Attorney Cross Examination
	Witness Performance		
Third Plaintiff/Prosecution Witness	Attorney Direct Examination		Attorney Cross Examination
	Witness Performance		
Defense			
Attorney Cross Examination		First Defense Witness	Attorney Direct Examination
		Witness Performance	
Attorney Cross Examination		Second Defense Witness	Attorney Direct Examination
		Witness Performance	
Attorney Cross Examination		Third Defense Witness	Attorney Direct Examination
		Witness Performance	
Closing Arguments		Closing Arguments	
Team Decorum & Professionalism		Team Decorum & Professionalism	
Total Scores			
TOTAL PLAINTIFF/PROSECUTION SCORE <small>(Min. Points 12, Max. Points 120)</small>		TOTAL DEFENSE SCORE <small>(Min. Points 12, Max. Points 120)</small>	

TIEBREAKER (in case of tie, circle the party that won this round): Plaintiff/Prosecution Defense

Explanation of any point deduction: _____

Please double-check your scores!

Name (Print): _____ Date: _____
 Signature: _____

SUGGESTIONS FOR SCORING MOCK TRIALS
Nebraska High School Mock Trial Competition

POINTS	PERFORMANCE	CRITERIA FOR EVALUATING STUDENT PERFORMANCE
1-2	Ineffective	Unsure of self, illogical, uninformed, not prepared, speaks incoherently, definitely ineffective in communication.
3-4	Fair	Minimally informed and prepared. Performance is passable but lacks depth in terms of knowledge of task and materials. Communications lack clarity and conviction.
5- 6	Average	Good, solid, but less than spectacular performance. Can perform outside the script but with less confidence than when using script. Logic and organization are adequate, but not outstanding. Grasps major aspects of the case, but does not convey mastery of same. Communications are clear and understandable, but could be stronger in fluency and persuasiveness.
7-8	Excellent	Fluent, persuasive, clear and understandable. Organizes materials and thoughts well and exhibits mastery of the case and materials. Understand the depth and breadth of the case.
9-10	Superior	Superior in qualities listed for "Excellent" rating. Thinks well on feet, is logical, and keeps poise under duress. Can sort out essential from the nonessential and use time effectively to accomplish major objectives. Demonstrates the unique ability to utilize all resources to emphasize vital points of the trial.

Factors to Consider in Scoring

OPENING STATEMENTS

Provided a case overview; mentioned the key witnesses; stated the relief requested; and provided a clear and concise description of their case.

DIRECT EXAMINATION

Used properly phrased questions (who, what, where, when, how); used proper courtroom procedure; demonstrated understanding of issues and facts; proper introduction of evidence; defended objections in clear, concise terms; used time effectively; and complied with all rules of the competition and spirit of fair play.

CROSS EXAMINATION

Used leading questions; properly impeached witnesses; raised proper objections and stated reasons clearly; knew Rules of Evidence and did not overuse objections; courteous of opponent; and complied with rules of competition and spirit of fair play.

WITNESSES

Credible; understood facts; responded spontaneously; poised and observed courtroom decorum.

CLOSING ARGUMENTS

Summarized the evidence; emphasized the supporting points of their own case and damaged the opponent's; concentrated on the important, not the trivial; applied the applicable law; and used arguments that followed a logical pattern, in direct and easily understood language.

FEEDBACK FORM INSTRUCTIONS

An important aspect of the educational process of mock trials is written constructive critique provided by the presiding and performance judges on the Feedback Form. The comments and suggestions below are meant to assist volunteer judges in their roles as educators about the law and our legal system.

Please read these comments and try to give students positive suggestions that will help them 1) do better next time, and 2) understand how our justice system works.

For many students written feedback is a valuable part of the competition. They learn from understanding *specifically* what they did well and what areas could be improved.

- Your written feedback should bear in mind the educational goals of the mock trial program.
- Remember that you are helping *educate, guide and nurture* these young people. Treat them with the respect you expect to receive from them.
- Be realistic about the legal system. It is not perfect.
- Remember you are a role model for the students and an ambassador for your profession.
- Comment on items that are actionable.
- Let students know that not all attorneys use the same methods and techniques. Differences of opinions regarding style of trial presentations are common.

DO NOT:

- Criticize students about their attire.
- Expect high school students to understand all that law students or lawyers understand.



Optional Feedback Form for Volunteer Judges

Please complete this form and return with your score sheet or visit our website at www.nebarfnd.org and complete this form online.

Please complete this form along with your scoresheet.

(★) Scoresheets do not change as a result of this form.

School Name	Team Color/#

Round of Competition: 1 2 3 4 5

PLAINTIFF / PROSECUTION or DEFENSE

Overall Team Performance:

Areas that Need Improvement:

Areas the Team Excelled In:

General Notes:

Name (Print): _____ Date: _____

Signature: _____



DISPUTE RESOLUTION FORM -- INSIDE THE BAR

(See Rules 28 & 29)

DATE _____

REGION _____

Plaintiff/Prosecution _____ Defense _____
 (School Name) (School Name)

Name of school filing dispute	
Name of student attorney filing dispute	

NATURE OF DISPUTE. Explain briefly why you are filing this dispute. Then give this form to the **PRESIDING JUDGE.**

PRESIDING JUDGE

*I have read this dispute form and determined that the dispute should be **DENIED.***

My reasons for denying this dispute are _____

OR

*I have read this dispute form and determined that the dispute should be **HEARD.** I will now present this form to opposing counsel and request their written response on page 2 of this form.*

SIGNATURE OF PRESIDING JUDGE _____

DATE & TIME _____



DISPUTE RESOLUTION FORM -- INSIDE THE BAR

(See Rules 28 & 29)

Opposing team's RESPONSE TO DISPUTE

DATE _____

REGION _____

Plaintiff/Prosecution _____ **Defense** _____
(School Name) (School Name)

Name of school filing response	
Name of student attorney filing response	

RESPONSE TO DISPUTE. Write a brief response to the written dispute. Then give this form to the PRESIDING JUDGE.

After each team has submitted written details (information) about the dispute, a hearing will be held. Each team shall designate one (1) student attorney to present the objection/response. Each student attorney has 3 minutes to present. After reviewing all the written information, hearing oral arguments and reviewing the relevant mock trial rules, a decision has been made in the matter. My decision is:

SIGNATURE OF PRESIDING JUDGE _____

DATE & TIME _____



DISPUTE RESOLUTION FORM -- OUTSIDE THE BAR

(See Rule 30)

DATE _____

REGION _____

Plaintiff/Prosecution _____ Defense _____
(School Name) (School Name)

Name of school filing dispute	
Name of teacher/attorney filing dispute	

NATURE OF DISPUTE. Explain briefly why you are filing this dispute. When finished, give this form to the PRESIDING JUDGE.

REGIONAL COORDINATOR

I received this Dispute Resolution Form on _____ (date) and have notified all pertinent parties of the nature of the dispute. I DID or I DID NOT feel that a response was necessary for me to make a decision.
(circle one)

If received, the response is attached to this form.

My decision in this dispute is: _____

I have notified all pertinent parties of my decision

SIGNATURE OF REGIONAL COORDINATOR _____

DATE & TIME _____



GROSS RULE VIOLATION FORM

(See Rule 22)

DATE _____

REGION _____

Plaintiff/Prosecution _____ Defense _____
(School Name) (School Name)

Name of school filing dispute	
Name of student attorney filing dispute	

NATURE OF DISPUTE. Explain briefly why you are filing this dispute. When finished, give this form to the REGIONAL COORDINATOR.

OPPOSING COUNSEL RESPONSE: _____

This dispute will be forwarded to the Bar Foundation Office. Then the Mock Trial Commission will be given all the details to review. The Commission will make a determination and communicate that to the State Coordinator who will inform the coaches.



**PROPOSED SUGGESTION FORM FOR TEACHER
AND/OR ATTORNEY COACH(ES)**

(See Rules 45)

DATE _____

REGION _____

Name of school filing suggestion	
Name of teacher &/or attorney filing suggestion	

Proposed Suggestion. Briefly explain why you are proposing this suggestion.

The Proposed Suggestion Form is available only to teacher and/or attorney coaches. This form must be submitted to the Nebraska State Bar Foundation's Executive Director. Coaches should describe the proposed suggestion in a maximum of 100 words. The suggestion(s) will be carefully considered and brought before the Mock Trial Commission. Based upon the Commission's recommendation, the suggestion is either accepted or denied. All suggested Rule changes will most likely be considered over the summer.

Nebraska State Bar Foundation
Re: Mock Trial
P.O. Box 95103
Lincoln, NE 68509

doris@nebarfnd.org

Fax: 402-475-7106



2019 Regional Competition

Most Effective Attorney

(Name of Student)

This certificate is presented by the _____
team to the Most Effective
Attorney of the _____ team.

(Date)





2019 Regional Competition

Most Effective Witness

_____ (Name of Student)

This certificate is presented by the _____ team to the Most Effective Witness of the _____ team.

_____ (Date)



2019-20 MOCK TRIAL COORDINATORS & REGIONS

REGION 1

Coordinator:	Honorable Leo Dobrovolny 1725 10 th St. Gering, NE 69341 (308) 436-6660 Fax: (308) 436-6759 leo.dobrovolny@nebraska.gov	Honorable Kristen D. Mickey 1725 10 th St. Gering, NE 69341 (308) 436-6648 Fax: (308) 436-6782 kris.mickey@nebraska.gov
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Counties: Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan and Sioux

REGION 2

Coordinators:	Honorable Frankie J. Moore 300 E 3 rd St. #254 P.O. Box 907 North Platte, NE 69101 (308) 535-8342 Fax: (308) 535-8344 frankie.moore@nebraska.gov	Lindsay Pedersen 121 N. Dewey St. #210 North Platte, NE 69101 (308) 696-3250 Fax: (308) 696-3252 lindsay@hall-atty.com
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Counties: Arthur, Custer, Dawson, Grant, Hooker, Keith, Lincoln, Logan, McPherson and Thomas

REGION 3

Coordinators:	Honorable David W. Urbom P.O. Box 847 McCook, NE 69001 (308) 345-4539 Fax: (308) 345-7907 dave.urbom@nebraska.gov	Deb League P.O. Box 378 Benkelman, NE 69021 (308) 423-2374 Fax: (308) 423-2325 deb.league@nebraska.gov
	Kathy Woodmancy P.O. Box 222 Grant, NE 69140 (308) 352-7530 Fax: (308) 352-7532 kathy.woodmancy@nebraska.gov	

Counties: Chase, Dundy, Frontier, Furnas, Gosper, Hayes, Hitchcock, Perkins and Red Willow

REGION 4

Coordinator: **Honorable Mark D. Kozisek**
P.O. Box 225
Ainsworth, NE 69210
(402) 387-2162
Fax: (402) 387-0918
mkoz@threeriver.net

Counties: Boyd, Brown, Cherry, Holt, Keya Paha, and Rock

Coordinator: **Mike S. Borders**
940 S D St.
P.O. Box 133
Broken Bow, NE 68822
(308) 872-3311
Fax: (308) 872-2255
borderslaw@gpcom.net

Counties: Blaine, Garfield, Greeley, Howard, Loup, Sherman, Valley, and Wheeler

REGION 5

Coordinators: **Honorable John E. Rademacher**
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Elizabeth Chrisp
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County: Buffalo

Coordinator: **Amy Skalka**
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Jared Krejci
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County: Hall

Counties: Adams, Clay, Franklin, Harlan,
Kearney, Nuckolls, Phelps, and Webster

REGION 6

Coordinators: **Honorable Donna Farrell Taylor**
501 Main – Courthouse
Neligh, NE 68756
(402) 887-4650
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judgetaylor7jdcc@yahoo.com

Counties: Antelope, Burt, Cedar, Cuming, Dakota, Dixon, Dodge, Knox, Madison, Pierce, Stanton, Thurston, Washington and Wayne

REGION 7

Coordinator: **Honorable James C. Stecker**
PO Box 36
Seward, NE 68434
(402) 643-4060
Fax: (402) 643-2950
stecker27@gmail.com

Counties: Boone, Butler, Colfax, Hamilton, Merrick, Nance, Platte and Polk

REGION 8

Coordinator: **Honorable Robert B. O'Neal**
1210 Golden Gate Drive, Suite 2165
Papillion, NE 68046
(402) 593-5918
Fax: (402) 593-2158
boneal@sarpy.com

Counties: Sarpy

REGION 9

Coordinator:	Honorable Julie D. Smith 4 th & Broadway Tecumseh, NE 68450 (402) 274-7955 Fax: (402) 335-6311 liz.johnson@nebraska.gov (Judge's bailiff)	Kelly Werts 713 4 th St. P.O. Box 126 Humboldt, NE 68376 (402)-862-2321 Fax: (402) 862-3290 kellywerts@gmail.com
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Counties: Cass, Fillmore, Gage, Jefferson, Johnson, Nemaha, Otoe, Pawnee, Richardson, Saline and Thayer

REGION 10

Coordinators: **Honorable John A. Colborn**
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Honorable Laurie J. Yardley
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Counties: Lancaster, Saunders, Seward and York

REGIONS 11 & 12

Coordinator: **Honorable Thomas K. Harmon**
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County: Douglas

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Nebraska State Bar Foundation