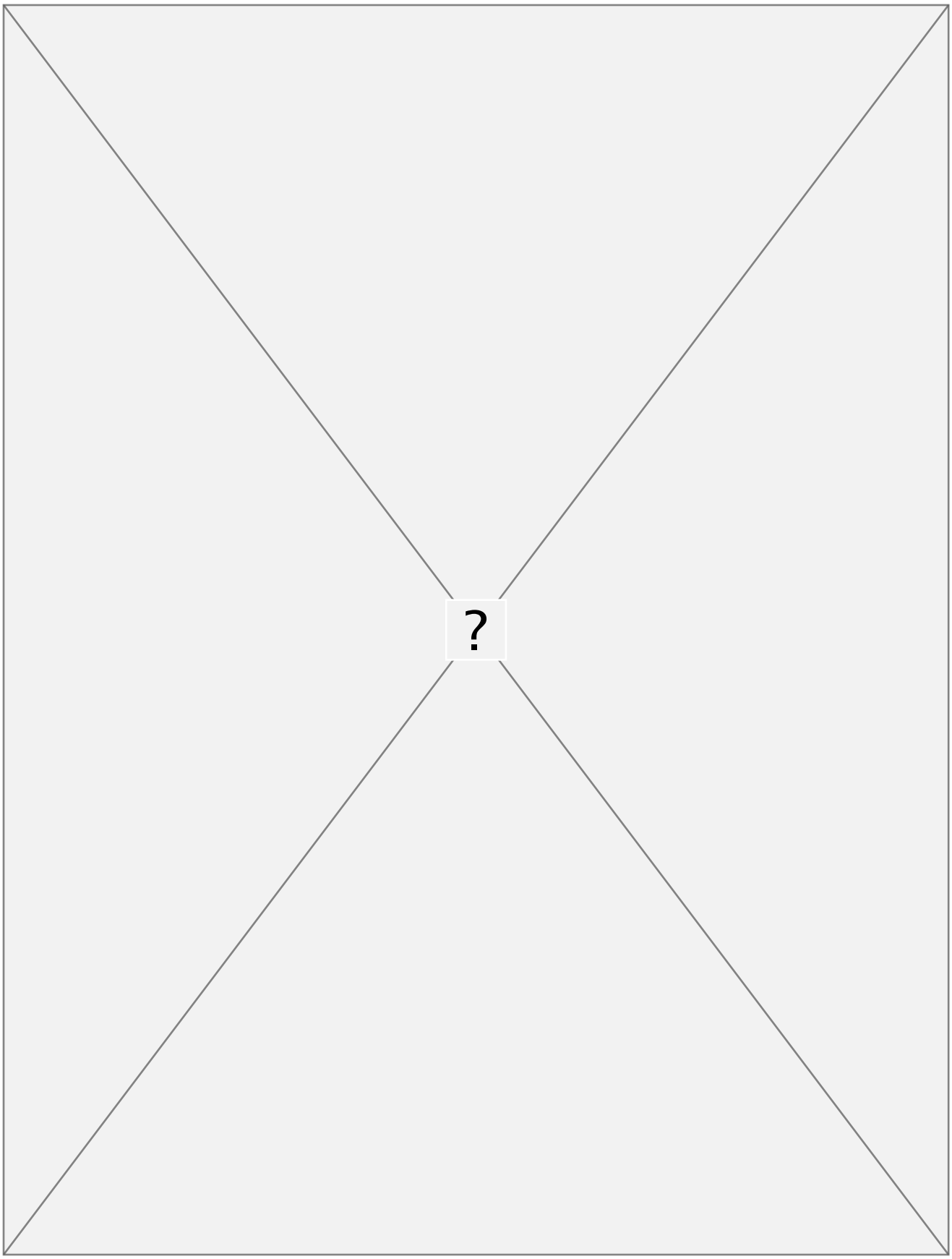
Delaware High School
Mock Trial Competition
2007

Rationale and Goals of the
Delaware Mock Trial Competition



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Code of Ethical Conduct

Code of Ethical Conduct

The following Code of Conduct is to be read and signed by all team participants, faculty coaches and attorney advisors. The signed copies are to be presented to the Executive Director of the Delaware Law Related Education Center, along with the team roster prior to the beginning of the Competition.

The purpose of the Delaware High School Mock Trial Competition is to stimulate and encourage a deeper understanding and appreciation of the legal system. The purpose is accomplished by providing students the opportunity to participate actively in the learning process. The education of students is the primary goal of the Mock Trial program, and healthy competition helps to achieve this goal. Other important objectives include: improving proficiency in speaking, listening, reading, and reasoning skill; promoting effective communication and cooperation between the educational and legal communities; providing an opportunity to compete in an academic setting; and promoting cooperation among young people of diverse interests and abilities.

As a means of diligent application of the Delaware Mock Trial Competition Rules, the Delaware Law Related Education Center encourages all participants to follow the Code of Ethical Conduct:

1. Team members 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 to be wrong or in violation of the Rules, including the Invention of Facts. Members will not willfully violate the Rules of the Competition in spirit or practice.

2. The student presentations shall be the work product of the students themselves. It is important that the opening and closing arguments, direct and cross examinations, testimony and all other presentations be the students' work, rather than the narration of words prepared by an adult.

3. Teacher coaches agree to focus attention on the educational value of the Mock Trial Tournament. They shall discourage the willful violation of the Rules. Teachers will instruct students as to proper procedures and decorum and will assist their students in understanding and abiding by the Competition Rules and this Code of Ethical Conduct.

4. 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 competition Rules and this Code of Conduct. Attorney coaches are reminded that they are in a position of authority and thus serve as positive role models for the students.

5. Attorney coaches and other legal advisors can help the team as constructive and critical teachers by listening, suggesting and demonstrating to a team. An attorney coach or legal advisor should:

   - Discuss the legal issues raised in the case;
   - Answer questions concerning general trial procedure;
   - Explain the reasons for and the sequence of the events and the procedures found in the trial;
   - Listen to the students' approaches to the case; and
   - Discuss general strategies and raise key questions regarding the students' enactment of their roles in the trial.

6. All participants (including observers) are bound by all sections of this Code and agree to abide by its provisions. Teams are responsible for insuring that all observers are aware of the Code.

Signatures:

2007 Delaware High School Mock Trial Competition

Aaron/Erin Wilson
v.
Gander's, Inc.

February 23, 24 & 26, 2007
New Castle County Courthouse

Contact Information:

Mock Trial Office
Delaware Law-Related Education Center, Inc.
301 Market Street, Wilmington, DE 19801
Phone: 302-778-0643

www.delrec.org

IN THE U.S. DISTRICT COURT FOR THE UTOPIA DISTRICT OF DELAWARE		
AARON/ERIN WILSON, Plaintiff, v. GANDER'S, INC. Defendant.	))))))))	Civil Action No. 1-06-CV-1

Case Summary

Until December of 2005, Aaron/Erin Wilson was employed as a manager at the Gander's store at Utopia Center, a shopping mall in Utopia, Delaware. Gander's is a large, nationwide retail chain that has sold men's apparel since 1984. Gander's added women's apparel in 1993, when company officials began to take note of the fact that young women were purchasing items traditionally marketed to young men (boxer shorts, baseball caps, etc.). Gander's operates thirteen districts nationwide. Other stores in this district are located in New Castle, Delaware; Dover, Delaware; Philadelphia, Pennsylvania; Columbia, Maryland; Richmond, Virginia; Washington DC; Reading, Pennsylvania; Annapolis, Maryland; Raleigh, North Carolina; and Savannah, Georgia.

Company officials publicly describe the Gander's age demographic as "twenty-something," although more than a few parents would tell you that the Gander's fad begins earlier, as high school and middle school students clamor for $49.95 baggy Oxford shirts. Gander's has tried in earnest to rebuild its image after a small public relations disaster in 2001. The 2001 Christmas catalog ("Take a Gander at This") was 70 pages in length, although the first image of Gander's merchandise did not appear until page 24. The earlier pages contained suggestive images of 18-to 22-year-olds and raised the ire of more than a few organizations that called for boycotts of Gander's until the catalog was pulled.

Although Gander's may not be the first to admit it, the retailer has spent sizeable sums of money conducting market research. The upshot of the research confirms what Gander's had long believed to be true—Young people are more likely to buy things from attractive peers. Although racially diverse, those who comprise the Gander's work force have two things in common: 1) they are young (generally 16-30); and 2) they are attractive, athletic and stylish. Aaron/Erin acknowledges having felt some implied pressure to hire individuals who met these criteria and himself/herself qualified on both fronts until mid-2005.

In July of 2005, Aaron/Erin was diagnosed with multiple myeloma, an aggressive form of cancer that attacks bone marrow through the production of malignant plasma cells. Always an athlete, Aaron/Erin thought s/he had simply injured a shoulder while rock climbing. Subsequently, a bone scan revealed that the bone had fractured as a result of the development of a tumor.

Familiar with the company's reputation of employing only beautiful store managers, Aaron/Erin initially concealed the fact that s/he had cancer, using personal days to cover a brief hospital stay and subsequent follow-up appointments with his/her physician.

As chemotherapy progressed, Aaron/Erin's hair began to thin beyond the point at which a Gander's baseball cap could continue to conceal his/her condition. By August, Aaron/Erin's physician, Dr. Terry Britton, introduced a treatment regimen that included prednisone which caused Aaron/Erin to develop a bloated appearance. Rumors ran rampant that Aaron/Erin abused drugs or suffered from AIDS. At a November store meeting, in an effort to squelch those misconceptions, Aaron/Erin announced to store employees and District Manager Sam/Samantha Reynolds that s/he had multiple myeloma.

Dr. Britton opines that the cancer from which Aaron/Erin suffers is terminal, but concedes that appropriate medical treatments (chemotherapy, stem cell transplants, etc.) are effective in addressing many of the symptoms. Britton's own son worked at the Raleigh Gander's while in college, but was terminated for reasons that have never been explained to the doctor. Dr. Britton finds it very suspect that his/her "already husky' son was terminated after he gained forty pounds. Dr. Britton also acknowledges that the Hippocratic oath states, "First, do no harm," and that Dr. Britton perceives that testifying adversely to a patient potentially goes against this oath.

Reynolds tells a far less sympathetic story about Aaron/Erin. According to Reynolds, s/he took a chance hiring Aaron/Erin, who had not taken as much as a single business class as an undergraduate at the University of Delaware. The Utopia store's sales numbers were sluggish at various points since Aaron/Erin became the General Manager in November of 2004. Moreover, Reynolds verbally reprimanded Aaron/Erin concerning a run-in Aaron/Erin had with a customer on December 15, 2005.

On December 18, 2005, during the Christmas rush, Reynolds terminated Aaron/Erin with a letter citing sales numbers, stating, "I no longer have confidence that you are capable of portraying the image Gander's wishes to convey to its customers and employees."

Jamie Brooks, Gander's Vice President of Human Resources, defends Reynolds's decision, and describes Gander's long-standing equal employment opportunity policy and numerous examples of disabled employees in the Gander's network. However, in addition

to a Master's in Human Resources, Brooks has a Ph.D. in Social Psychology and has completed a dissertation entitled “The Attractive Sales Clerk: Persuading the Young Buyer to Part with His Dollars."

Stephen/Stephanie Akers preceded Aaron/Erin as the General Manager of the Utopia store, serving from June of 2001 until his/her resignation in November of 2004. Between May of 2002 and his/her resignation, s/he worked directly with Aaron/Erin, who served as his/her Assistant Manager. Akers relates that the Utopia sales figures were as low during his/her tenure as they were during Aaron/Erin's. He/she attributes these numbers to factors such as 9/11 and "Take a Gander at This". Akers was asked to resign and has been advised by his/her counsel to assert the 5th Amendment in response to questions concerning his/her resignation, but Akers is insistent that s/he will answer all questions, since s/he did not embezzle any money, as Reynolds suggested.

Fifteen-year-old Don/Donna Gusmer will describe a confrontation s/he had with Aaron/Erin on December 15, 2005. Gusmer admits that s/he may have provoked Aaron/Erin, but swears that Aaron/Erin's reaction was out of proportion to the incident. Gusmer also concedes that Aaron/Erin "looked real sick" at the time of the incident—that s/he "looked like s/he was going to die right then and there."

Aaron/Erin's cancer is now in remission and generally s/he appears healthy, although Dr. Britton believes that s/he will probably not live to see his/her thirty-second birthday. S/he has commenced a lawsuit in the United States District Court for the District of Delaware, alleging that Gander's terminated him/her in violation of the Americans with Disabilities Act of 1990 (“ADA”), and that revenues and customer relations were a pretext for illegal discrimination.

Gander's takes the position that Aaron/Erin was not disabled for purposes of the ADA and that Aaron/Erin was terminated for a legitimate, non-discriminatory reason.

Witnesses	**Exhibits**
Plaintiff	Gander's EEO Policy
Aaron/Erin Wilson	Written Warning
Terry Britton	Charge of Discrimination filed with EEOC
Stephen/Stephanie Akers	Two Charts showing annual sales comparisons
Defendant	Gander's Gift Certificate
Don/Donna Gusmer	Email from Don/Donna Gusmer
Jamie Brooks	Gift Certificate to Don/Donna Gusmer
Samuel/Samantha Reynolds	

Both sides stipulate to the following facts:

Stipulations

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. The signatures on the witness statements are omitted due to the electronic delivery of the case.
3. The requirements for venue have been met.
4. Whenever a rule of evidence requires that reasonable notice be given, it has been given.

AFFIDAVIT OF STEPHEN/STEPHANIE AKERS

My name is Stephen/Stephanie Akers. I started work at Gander's in Manchester, New Hampshire, my sophomore year of high school. Upon graduation from high school, I headed south to Dover, Delaware, where I attended Wesley College and earned my business degree while working nights at the Delaware State University. I then completed a two-year Master's program in Business Administration at the University of North Carolina at Chapel Hill and continued to work at Gander's.

In June of 2001, I entered the Gander's store management program and became the General Manager of the store in Utopia. I held that position until November of 2004, when I resigned my employment after being accused of embezzlement.

I'm sure you've heard about how my employment with Gander's came to an end. It was in all the papers, but what was reported is not accurate. As you probably know, Sam Reynolds had me charged with embezzling money. I never embezzled anything, and notwithstanding my lawyer's admonitions that I should assert the 5th Amendment privilege, I am more than happy to tell what really led up to my termination.

The Gander's home office in St. Louis contacted me and asked if I would like to interview for Sam Reynolds' position. I was told to keep it hush-hush. When Gander's sent Sam's boss to interview me at the Utopia store, Sam made a surprise visit to the store and walked in on the interview. I didn't get the promotion and, over the next several weeks, Sam made my life miserable. I think s/he must have felt threatened by me.

Eventually, I resigned in November of 2004 but, no matter what Sam may tell you, nobody asked for my resignation. I was just tired of the intimidation. I have never stolen a thing, but that didn't prevent Sam from going before a magistrate judge and swearing out a warrant against me three days after I resigned.

I recommended that our District Manager, Sam Reynolds, hire Aaron/Erin Wilson as an Assistant Manager in May of 2002. Sam initially expressed reservations about Aaron/Erin's candidacy and, more particularly, the lack of any real business background. I gave Aaron/Erin a resounding endorsement. We had known each other at Wesley College, mainly as a result of our mutual love for rock climbing, hiking, and the outdoors. I was glad to see Sam make the right call for a change and accepted my recommendation.

Aaron/Erin was the model employee. S/he had an incredible work ethic and, unlike the other Assistant Manager at the store, s/he was not a "clock puncher" who was constantly worried about what time the workday would end. When you work in retail management, your free time is not your own. You have to be prepared to work long hours, and Aaron/Erin was. S/he always asked good questions and appeared to have a sincere interest in learning the Gander's way of doing things.

Sometimes I had a problem with the way Gander's did things. Sam Reynolds would tell female employees how much makeup they could wear. I had heard from one former employee that Sam told her to go to the gym with instructions to lose the "freshman fifteen."

I have stayed in touch with Aaron/Erin since my termination. We have become very close friends over the last year or so. Of course, the rock climbing and hiking have fallen to the wayside because of Aaron/Erin's medical condition.

I was disgusted to hear that Aaron/Erin was terminated for poor sales performance. Sales dropped after September 11, 2001 and they never recovered. The world just became a different place. People stopped spending money the way they did before 9/11.

Although you would think a retail chain would try to find a way to recover some of those lost sales, Gander's apparently wanted to flush its market share down the tubes. The home office published "Take a Gander at This," which may be the most distasteful Christmas catalog ever used to promote a retailer. The catalog was 70 pages in length, although the first image of Ganders merchandise did not appear until page 24. The earlier pages contained suggestive photographs and images of 18- to 22-year-olds and raised the ire of more than a few organizations, which called for boycotts of Gander's.

The chairman of the Utopia City Council told me that he would personally see to it that our store was closed down for violating the obscenity ordinance if we did not stop selling the catalog. Eventually, the national boycotts caused the folks at the home office to take notice. The catalog was pulled, without apology or explanation. You cannot fairly expect a retailer to recover from that sort of public relations nightmare, and the Utopia Gander's store never did.

According to what Aaron/Erin told me, the store's average daily sales when s/he was General Manager were $8,216.24. My average daily sales were about $6,400.00. And you mean to tell me Sam didn't make up the reason s/he let Aaron/Erin go? Please. Let's not be naive about this.

I have reviewed the statement this 20th day of July 2006. It is true and correct and I have nothing more to add.

/s/
Stephen/Stephanie Akers

AFFIDAVIT OF TERRY BRITTON, M.D.

My name is Dr. Terry R. Britton. I live in the Bethel Park community outside Utopia, Delaware, where I practice medicine with Utopia Health Associates (sometimes called "UHA"), a multi-specialty group. I am Board-certified in hematology and oncology, sometimes referred to as the hemonc (pronounced "HEEM-onk") specialty. Before relocating to Utopia, I attended college and medical school at Thomas Jefferson University. After receiving my M.D. in 1986, I completed a residency in Norman, Oklahoma, I relocated to Utopia thereafter and have been with UHA ever since.

When I became a physician I took the Hippocratic oath which begins, "First, do no harm." I take that oath very seriously. I am among those who believe that testifying adversely to the interests of one of my patients potentially violates this oath. Although I certainly want to remain professionally objective, I believe one of the things you have to do as a physician is to develop an alliance of trust with your patient. That trust is potentially destroyed if the patient believes your testimony is unfavorable. However, if asked to testify, I will testify, and I will do so truthfully.

Of course, there is a fee for my in-court time, which is time I would otherwise spend treating patients. That fee is $475 per hour.

Multiple myeloma, or myelomatosis, is a cancer that develops in the blood plasma cells. In a healthy person, these cells produce antibodies that ward off disease and infection. In individuals with multiple myeloma, these cells are overproduced and collect in the bone marrow, crowding out normal bone marrow and wreaking havoc on the bone structure.

According to the American Cancer Society's research I have seen, only about two percent of all individuals suffering from multiple myeloma are younger than 40 years of age. Moreover, multiple myeloma is not exactly the most common form of cancer. Fewer than twenty thousand Americans are diagnosed with it every year.

At any given time, I am treating less than five patients with the disease. I know I have treated one patient who was forty-two when he was diagnosed, but I can't recall treating anyone in their 20's or even their 30's, until Aaron/Erin Wilson.

Perhaps that is why I find Aaron/Erin's case to be so remarkable. Aaron/Erin was referred to me by UHA family practitioner Dr. Janet Ward in June of 2005. What I learned from Dr. Ward was that Aaron/Erin appeared to have sustained a massive fracture to Aaron/Erin's left shoulder. Ward had taken some initial x-rays that suggested a large mass was lying at the top of the shoulder joint.

From that point, I ordered a procedure known as a bone scan, a procedure I frequently use for purposes of ruling out the presence of tumors and infections. The patient is injected

with a radioactive marker through an intravenous (IV) line. Several hours later, we place the patient in a scanner and look for the higher concentrations of the radioactive marker. These higher concentrations look darker on the image. We use a highly unscientific term for these areas: Hot spots. Hot spots suggest the possible presence of tumors, infections or small fractures that we aren't able to pick up with an x-ray.

After the bone scan, it is my practice to order a Computerized Tomography scan, more commonly referred to as a "CT" scan. The CT scan allows me to look at images of the body in cross-sections of a millimeter or less. It affords me an opportunity to look at the structure of the bone.

The results of Aaron/Erin's bone scan were not good. The shoulder area lit up like a Christmas tree, leading me to the preliminary conclusion that we either had a very large tumor or a significant infection up there. In addition, I noted eleven other hot spots, most notably in Aaron/Erin's rib cage and near his/her shinbone. The CT scan confirmed the presence of the tumor in Aaron/Erin's shoulder but, based on my interpretation of the imaging, the other hot spots had not fully developed into tumors. We commenced chemotherapy immediately, and it continued in monthly weeklong cycles, into the winter months. Thankfully for Aaron/Erin's sake, we were able to do most of the chemo treatments on an outpatient basis.

After attempting other chemotherapy options, we opted for MP treatment—a combination of melphalan and prednisone. Melphalan is an alkylating agent that aims to hinder the division of cancerous cells by interfering with their DNA code. Prednisone is a steroid from the cortisone family. It is used in conjunction with melphalan because our experience shows that the combination works better together than just melphalan alone.

Aaron/Erin complained to me more than once that the prednisone caused him/her to look bloated. This is not an infrequent complaint. I have heard this from a number of other patients and have personally observed it. Aaron/Erin also complained of considerable trouble urinating, which is a function of his/her body's protein levels. Upon my recommendation, Aaron/Erin has also ceased hiking, camping, biking, rock climbing and other potentially strenuous physical activities.

I have been asked to render an opinion as to whether Aaron/Erin's cancer can be controlled through medical treatment. The answer to that question is yes, and no. I can control the symptoms for some time. For instance, the MP treatment will kill cancerous cells and, if 100% successful, will keep Aaron/Erin in remission for some time. Unfortunately, the cancer will recur. Even the more dramatic sorts of treatment, such as stem cell transplantation, are not cures for cancer.

My understanding is that Aaron/Erin's lawsuit involves Ganders, Inc. Aaron/Erin agreed that we would not discuss it with one another, although I seem to remember reading about it in *The Utopia Star-Tribune*.

The fact that the case involves Gander's is a bit of an unhappy coincidence for my family. My son worked at the Raleigh Gander's while he was a student at Delaware State University. The store manager terminated him for reasons that have never been explained to me. I find it very suspect that my already husky son was terminated after he gained forty pounds. I suspect we do not have a case against Gander's, but suffice it to say I will be watching the outcome of Aaron/Erin's lawsuit with great interest.

I have reviewed the statement this 20th day of July 2006. It is true and correct and I have nothing more to add.

/s/
Terry Britton, M.D.

AFFIDAVIT OF AARON/ERIN WILSON

My name is Aaron/Erin Wilson. I am twenty-seven years old. I am single and I live by myself in Utopia, Delaware. As you might imagine, it is a bit hard to maintain a steady relationship when you finally reveal the fact that you have cancer to the person you are dating. You can only deceive the people you care about for so long.

I was Assistant Manager of the Gander's store from June of 2002 until November of 2004. I was then promoted to the General Manager position, and I held it until December of 2005. I am currently looking for work, if you know of any openings.

I am told that I am a medical oddity. I have a form of cancer known as multiple myeloma. Dr. Janet Ward, my family physician, tells me that I am the youngest person she has ever known to have this disease by some thirty-two years. My oncologist, Dr. Britton, says s/he has never seen anything like it, either.

I love the outdoors. I am—well, I was—an avid rock climber, hiker and camper. Ironically, it was my love for the outdoors that led me to discover my cancer. I was with my friends, Stephen/Stephanie Akers and Charlie Coker and my father on a 2005 Father's Day climb at Mt. Ebright, Delaware, when I felt something pop in my right shoulder. I was in excruciating pain. My friends rushed me to an urgent care facility in Wilmington. I got a prescription for some pain medicine and was able to drive home, although the pain was pretty bad.

I thought I had just over-done it, but I could not move the next morning. I went to see Dr. Ward, who admitted me to the hospital. Thankfully, I had never taken a day off from work and was able to take eight of my 56 "banked" vacation days. If Sam Reynolds had known I was hospitalized, s/he would have fired me immediately. After all, Gander's is well known for its policy of hiring only beautiful and healthy people. The corporate office actually has conducted research on why you don't want to hire sick people.

Those next eight days were no vacation, though. I was poked, prodded, and scanned at Utopia Hospital. I was introduced to Dr. Britton for the first time. S/he gave me the news about the cancer. A bone scan revealed that the bone at the top of my shoulder had fractured as a result of the development of a tumor. Four rounds of chemo treatments later, the tumor was gone, but I am not cancer free.

I am no doctor, but it is my understanding that multiple myeloma is pretty darn aggressive. It can attack anywhere there is bone marrow. Dr. Britton tells me I have a reasonably good chance of going into remission for a while, provided I follow my treatment regimen but, right now, I have a couple of "hot spots" that s/he is trying to knock out. As I understand them, these "hot spots" are areas of cancer cell activity that have not fully developed into tumors. The long-term prognosis is not so great. Dr. Britton

tells me I will likely not make it to see my mid-30's but I try to take care of myself and I pray a lot. I am all about the power of positive thinking.

I knew that if I disclosed my cancer to Sam Reynolds, I was a goner. I explained away the sling I wore on my shoulder in June and July as a rock climbing injury. In June, July, and September (three of our slowest months) I burnt a total of 22 personal days.

August was brutal for me. I had a weeklong round of chemotherapy treatments. Because we had our "Back to School" sale running, I would take chemo at the hospital in the morning and come to the store in the evenings and try to pretend nothing was wrong. I was so sick I thought I would die, and I'm sure I was not my usual friendly self. I would have liked to have stayed in bed the week after that particular round of chemo but, instead, I was at the store working on our inventory plan.

Although the dosage of my monthly chemo treatments was not all that high, my hair began to thin a little bit. I wore a Gander's baseball cap to cover that, but I am sure it started to show some time in the fall. By October, Dr. Britton had me on heavy doses of prednisone. They make me a bit hyper and maybe even a little inattentive. I actually wasn't paying attention one day and backed out of the driveway before I raised the garage door. Needless to say, I didn't tell Sam Reynolds about that. The prednisone also caused me to become bloated.

That made me nervous. Sam has a low tolerance for people who aren't perfect looking. I distinctly remember a conversation we had one day when he pulled me out of earshot of other employees. I had just hired a sixteen-year-old who was struggling with acne. Referring to this new hire, Reynolds said, "Why did you go and hire him? It looks like he fell out of an ugly tree and hit every branch on the way down."

And then there was the story of what happened in Savannah. At a district sales meeting, long-time Savannah store manager Jane Thompson told me that Reynolds had directed her to "fire Gimpy," Reynolds' not so polite method of referring to an Assistant Manager who had cerebral palsy.

In late October of 2005, I started attending group therapy for terminally ill young adults. Several of the people in the group are pretty well known in Utopia for being HIV-positive. One of my employees saw us exiting our November 13, 2005 therapy meeting. Within a day, rumors at the store were rampant about how I was dying of AIDS.

I knew I had to do something to squelch the rumors, so I called a store meeting on November 17, 2005. I asked Sam Reynolds to fly up from the district office. I took three deep breaths, and I shared the news. Many of my employees were very supportive. Sam

Reynolds simply said "Sorry to hear that" and pulled out his/her PDA to send an email message. S/he was probably sending an email to the home office in St. Louis, trying to figure out how to fire me.

The reasons Sam gave me for my termination are trumped up. My sales numbers are on track with those of my predecessor. Sam never provided me any sort of counseling about our sales performance.

I wish somebody had given me an opportunity to respond to the Don/Donna Gusmer incident before letting me go. S/he came into the store literally two minutes after closing time and wandered aimlessly for 45 minutes while I was trying to close out the cash register for the day, I tried to give him/her his space and let him figure out what s/he wanted while I tended to other matters. When s/he finally came up to the cash register, I tried to break the tension with a comment along the lines of "I was beginning to think you weren't going to buy anything." S/he threw our merchandise on the floor and ran out of the store. I didn't say anything else.

Before filing this suit, at the direction of my lawyer, I filed a Charge of Discrimination with the Equal Employment Opportunity Commission. The contents of that Charge are true to the best of my knowledge. I do not know the outcome of that Charge, but I am informed that the EEOC elected not to pursue the claim on my behalf. I do not know why.

I know it is possible I stand to win a large sum of money if I prevail in my lawsuit against Gander's. Anyone who knows me knows that this case is not about the money. It's about standing up for myself and teaching Gander's a lesson I hope it will never forget.

I have reviewed the statement this 20th day of July 2006. It is true and correct and I have nothing more to add.

/s/
Aaron/Erin Wilson

AFFIDAVIT OF DON/DONNA GUSMER

My name is Don/Donna Gusmer. I am 15 years old. I live about ten miles outside Utopia, Delaware in the Parkside community. I live there with my mother and father and my younger sister, Debbi (age 10).

I am a sophomore at F. Scott Fitzgerald High School. Many of my classmates come from wealthy families, and I feel a great deal of pressure to fit in. As far as I can tell, I don't fit in. My parents are always telling me how witty and smart I am and how I should get involved in extracurricular activities. I can tell they're just trying to make me feel better about myself. I had thought about trying out for the mock trial team, but I just don't know if it's for me.

While I appreciate my parents' vote of confidence, I don't really consider myself witty or smart. However, I know enough about people to know they make value judgments about me based upon the neighborhood I live in, the make of my father's car and the clothes I wear. I don't live in a $300,000 house, and my dad doesn't drive a Mercedes 740. Mom and Dad do give me freedom to pick out some of my own clothes, as long as I pay for them with my allowance money and they are not too extravagant.

This explains how I came to be at Gander's at Utopia Center on the evening of December 15, 2005. If you go to Fitzgerald and you don't regularly wear clothes with the Gander's goose logo, you might as well be invisible to the popular kids. I had decided that I had been invisible long enough.

I had done chores around the house for several weeks. I had managed to save about sixty-five dollars, and the money was burning a hole in my pocket. My parents would never approve if I told them I wanted to buy expensive clothes, so I fibbed to my dad and told him to drop me at the Utopia Center movie theatre, supposedly to meet a friend for a movie. From there, I walked to Gander's.

As I discovered, sixty-five dollars really won't buy very much at Gander's. I saw a rugby shirt I really liked, but it was priced $54.99. The clearance rack had some Gander's t-shirts in my size for $13.50 each. I must have spent forty-five minutes going back and forth between the clearance rack and the rugby display, agonizing about whether to buy the rugby or four t-shirts. I finally decided that I would rather have a gaggle of four Gander's geese, so I took four t-shirts from the rack to the cash register.

This was my first encounter with Aaron/Erin Wilson. S/he was standing behind the register. His/her face was swollen and pale. S/he looked really sick—more like somebody you'd expect to see at the hospital than someone working at the mall.

Anyway, when I brought the shirts up to the register, Aaron/Erin laughed at me and

remarked, "I was beginning to think you weren't going to buy anything." S/he looked disgusted. Apparently, s/he had been watching me labor over my decision as to what I should buy, but s/he had never once asked if s/he could help me.

I was offended by the comment. After all, it's kids like me who are paying Aaron/Erin's salary, and there I was, being mocked for wanting to take my time to make a good decision. I responded, "Come to think of it, you're right. I don't want to buy anything." I started to leave the sales counter.

I understand Aaron/Erin says I then threw the t-shirts on the floor and walked out. That did not happen. As I recall, I accidentally knocked two of them onto the floor as Aaron/Erin went ballistic, shouting, "Get out of here, and don't come back."

On the morning of December 16, I woke up still indignant about the incident. I got on my computer and found a web site for Gander's. I wanted to talk to Aaron/Erin's supervisor about what had happened. I used the on-line staff directory to get a phone number for the Human Resources Department. The HR people then gave me Sam Reynolds' name and number. When I telephoned him/her, Sam Reynolds was almost insistent that I put the incident in writing. I told him/her I just wanted to let somebody know and didn't have any interest in getting Aaron/Erin in trouble. Reynolds said s/he understood but told me she really needed me to document the incident. She offered to send me a $50 Gander's gift certificate if I could send him/her a short email about the incident before noon. I was already on Christmas break, so I spent a few minutes knocking out a short email message.

People at school have really begun to notice me since I became involved in this case.

I have reviewed the statement this 20th day of July 2006. It is true and correct and I have nothing more to add.

/s/
Don/Donna Gusmer

AFFIDAVIT OF JAMIE BROOKS

My name is Jamie Brooks. I am employed as the Vice President of Human Resources of Ganders, Inc., in St. Louis. Gander's is a large nationwide retail chain that has sold men's apparel since 1984. Gander's added women's apparel in 1993, when company officials began to take note of the fact that young women were purchasing items traditionally marketed to young men (boxer shorts, baseball caps, etc.). Gander's is broken down into thirteen regions, with each region consisting of between six and ten stores.

I work at the company's home office in St. Louis, Missouri. I majored in Sociology at St. Louis University and received my B.A. degree in 1983. I then studied Social Psychology at Granite State University, earning a Ph.D. in 1987. My dissertation was entitled, The Attractive Sales Clerk: Persuading the Young Buyer to Part with His Dollars." I was not immediately able to find a job in my field, so I went back to school again, this time receiving a Master's in Human Resources from Wayne State University in 1990.

I went directly from Wayne State to Gander's, where I worked as Vice President of the Marketing Department until January of 2004. I was head of Marketing when Gander's published its 2001 Christmas catalog, "Take a Gander at This." I am afraid we got carried away with that publication. We were trying to use it as an opportunity to show we market to young adults of various races, ethnicities and genders. Most, if not all, of the models in the catalog were very attractive. In hindsight, we probably didn't give enough thought to the fact that we might be perceived as selling models rather than merchandise.

Keep in mind, though, that while I was Vice President of Marketing, I commissioned and personally oversaw a study, the results of which suggested that sixteen- to twenty-four-year-olds are more likely to make purchases from individuals they perceive as "attractive" and "healthy." In the study, a researcher gave each subject $25.00 and instructed the subject to enter a mock retail store, select merchandise, and take the merchandise to one of two cashiers at a check-out counter. The cashiers (actually researchers) were instructed not to say anything to the subject, or to make eye contact with the subject, until he or she selected one of the two cashiers. Thereafter, the subject was asked to describe the cashier from whom he or she had made the purchase, selecting from "attractive" or "not attractive" and "healthy' or "not healthy". Then the subject was asked to make the same description with regard to the cashier he or she did not select.

In 274 of the 300 trials, subjects described the selected cashier as "attractive," "healthy," or both. In 249 of these 274 trials, subjects identified the rejected cashier as "not attractive," "not healthy," or both. In only three instances was the selected cashier described as both "not attractive" and "not healthy". The results were not remarkably different for male and female subjects. The results were also consistent across the age demographic of 16 to 24. I was pleased with the methodology of our study, which was consistent with several earlier studies conducted by other social psychologists. We

actually invited a number of the subjects back to assist us in the selection of our models for the catalog.

We don't have any "written-in-stone" hiring policies. However, we have developed a brand image geared to selling our merchandise to a younger crowd, and we have spent significant money on research that scientifically demonstrates our sales will increase if we project a young, healthy and attractive image. Gander's has spent $70 million in the past two years, and much more over the last 15 years, developing that brand image. Our own internal research, which wasn't cheap either, also indicates that we can further project that image, and increase sales, through the retention of young, healthy and attractive sales personnel. Again, we don't have any hiring rules on this criteria, and we certainly follow all of the employment laws, but we can't ignore this valuable information or pretend we haven't spent millions developing the goodwill of our company, which is intertwined with the image of young, healthy, attractive people.

The results of our study were discussed at a district manager's meeting in Orlando, Florida. I have not been able to confirm whether Sam Reynolds was at that particular session of the meeting. A number of individuals snuck out of some of the afternoon sessions and headed to the theme parks with their families. I hasten to add that, as far as I know, none of our district managers has ever been told that they should refrain from hiring sick or disabled individuals.

After the PR flap ensued following "Take a Gander at This", I accepted the position I currently occupy. My current responsibilities include assuring that Gander's administrative and managerial employees comply with our equal employment opportunity policy and training employees with regard to our hiring and firing practices. I am known for saying "Document, document, document," stressing to supervisors the need to carefully prepare documentation supporting disciplinary action.

I also assist our in-house and outside counsel in personnel matters that end up in litigation. I take pride in our litigation record. We employ approximately 5,500 individuals. Currently, we have only two ADA lawsuits pending nationwide. There is the Wilson case, which we have decided to defend vigorously. The other is a claim brought by a former assistant manager at the Savannah, Georgia Gander's, against store manager Jane Thompson and Sam Reynolds. We have made a modest offer to settle the Georgia lawsuit and we are confident we will be able to settle the case for less than we would otherwise be paying our outside counsel to defend the suit.

As the top personnel officer, I am the custodian of all personnel records of current and former employees. I placed two different documents in Aaron/Erin Wilson's file at the direction of Sam Reynolds. One was a written warning; the other was a memorandum of

termination. Although I encourage supervisors to review any proposed disciplinary action with me before taking it, Sam is a veteran district manager with ten years of experience, and I trust his/her good judgment in making employment-related decisions. However, in early December of 2005, Sam did tell me to "be on the lookout" for a possible termination of his General Manager. Sam indicated s/he was "tired of looking at lagging sales numbers in Utopia."

Sam telephoned me on December 20 and told me to look for a Fed Ex package containing a written warning and a termination letter relative to Aaron/Erin Wilson. I'm not exactly sure when the documents were prepared, but the notation on the bottom indicates that I put each of them in Aaron/Erin's file on December 21, 2005.

My review of Sam's personnel file indicates that s/he had completed at least two sensitivity training seminars regarding the disabled. It is clear that Wilson was let go because of his/her store's sales performance, and I believe Wilson has unfairly targeted Sam because of the pending lawsuit in Savannah.

I have reviewed the statement this 20th day of July 2006. It is true and correct and I have nothing more to add.

/s/
Jamie Brooks

AFFIDAVIT OF SAMUEL/SAMANTHA REYNOLDS

My name is Sam Reynolds. My better half, Chris, and I live with our three rug-rats, Ben, Diana and Kaeley, in Dunwoody, Georgia.

I am the District Manager for Gander's, a clothing retailer that has developed a significant presence in the U.S. over the last twenty years. Gander's began with men's apparel in 1984. Gander's added women's apparel in 1993, when the home office in St. Louis began to take note of the fact that young women were purchasing items traditionally marketed to young men (boxer shorts, baseball caps, etc.).

Gander's has thirteen districts nationwide. My district consists of stores located in New Castle, Delaware, Dover, Delaware, Philadelphia, Pennsylvania, Columbia, Maryland, Richmond, Virginia, Reading, Pennsylvania, Annapolis, Maryland, Raleigh, North Carolina, and Savannah, Georgia. Geographically speaking, my district is the biggest in the country. As a result, I rarely get to see my home or my kids, or so it seems. I am on the road an average of thirty-six weeks a year, visiting the various stores. Basically, my job is to manage the store managers, whom we call "General Managers," and to assure the profitability of the stores.

I have been with Gander's since I got my MBA degree from the University of Alabama in 1994. At age 34, I am about the average age of Gander's District Managers.

I tend to take a little heat from the folks in St. Louis about my tendency to shoot from the hip. I may have made an inappropriate remark or two over the course of ten years, but by no means am I some kind of bigot. By and large, though, I think the home office is well satisfied with my work performance. Most of my stores (except Columbia, Utopia, Savannah and Raleigh) are extremely profitable. That could explain why I received $98,000.00 in discretionary bonus compensation last year, bringing my total compensation package to $182,500.00.

Before I delve into what happened with Aaron/Erin Wilson, I want to respond to some things Jane Thompson has said about the termination of a store employee in Savannah. I never told anybody to "fire Gimpy." I would never use that kind of insensitive term to refer to another person. I was taking a light-hearted jab at myself one day when Jane dropped me at the Savannah Airport. I had just had knee surgery and I hobbled out of her car, saying, "Gimpy has to go." The fact that we had been talking a few minutes earlier about her Assistant Manager's work performance is just coincidental. It's pretty sorry for Jane to be taking pot shots at me, now that we have both been drug into the Savannah lawsuit.

As for Aaron/Erin, I am disturbed to see that s/he is hiding behind a tragic medical condition. S/he knows why I let him/her go. By December of 2005, I had absolutely zero

confidence that Aaron/Erin could continue to project the image I wanted and needed for the Utopia store. Our gross sales for that store were in the tank. I had tried to afford Aaron/Erin every opportunity to improve the store's performance, and it just wasn't happening.

In fact, I issued Aaron/Erin a written warning about the sales performance several weeks earlier, and I never received any sort of indication from Aaron/Erin that s/he was the least bit concerned. I understand Stephen/Stephanie Akers intends to testify that his/her numbers were bad, too, and I did not do anything about it. I personally saw Akers remove $426.00 from the cash register one day. S/he was in charge of reporting his/her numbers to me. Candidly, I think she monkeyed with the numbers to make them appear lower, thus accounting for his/her own self-made cash shortfalls.

Assuming Stephen/Stephanie's figures are correct, there were a number of other factors that explain why I kept him/her on so long. After September 11, 2001 and the terrorist attacks, Americans stopped spending money the way they did before. There was also a plant closing in Utopia during her employment, and many folks lost their jobs. Finally, there was the unfortunate "Take a Gander at This" PR campaign, thanks to those bozos in St. Louis. We took a hit at most of our stores. Unfortunately, Utopia never bounced back, even after I had given it a reasonable time to do so. The incident with Don/Donna Gusmer was pretty well the last straw for Aaron/Erin. I can't have a General Manager treating people that way. When I heard about the incident, I explained to the customer that I could not take action without a written complaint. I never offered to send a gift certificate to Gusmer and only did that as a good will gesture after I received the complaint.

I don't know what all this talk is about how you have to be good looking to work at Gander's. I certainly don't subscribe to that philosophy or require that the General Managers who work for me do so. I was not at the particular training session in Orlando which Jamie Brooks references in his/her affidavit. I don't care what you look like, or what medical condition you have, if you can push our merchandise.

I do wish Aaron/Erin the best in his/her recovery and I certainly would not wish multiple myeloma on anybody.

I have reviewed the statement this 20th day of July 2006. It is true and correct and I have nothing more to add.

/s/
Samuel/Samantha Reynolds

EXHIBIT 1

EQUAL EMPLOYMENT OPPORTUNITY POLICY

Gander's is an equal employment opportunity employer which does not discriminate with respect to compensation, terms, conditions or privileges of employment on the basis of race, color, sex, religion, national origin, age, disability or other non-relevant criteria.

EEG Policy Rev. 5/1/98

EXHIBIT 2

GANDER'S CLOTHIERS
Southeastern District
1072 Duck Ave., Suite 300
Atlanta, GA 30036
Telephone: 404-555-1234

CUSTOMER SATISFACTION GIFT CERTIFICATE

This certificate entitles D. Gusmer to a Fifty Dollar ($50.00) merchandise credit to be applied against the purchase price of merchandise from our store in Utopia Center, Utopia, North Carolina.

_____

Sam Reynolds
District Manager
December 21, 2005

EXHIBIT 3

GANDER'S CLOTHIERS
Southeastern District
1072 Duck Ave., Suite 300
Atlanta, GA 30036
Telephone: 404-555-1234

TO: Aaron/Erin Wilson FROM: Sam Reynolds
DATE: November 25, 2005
RE: WRITTEN WARNING

I regret that I must issue you this written warning as a result of the Utopia store's poor sales performance in recent months. While you have shown initiative in other areas of your job, I trust you understand that as the General Manager, you bear the ultimate responsibility for the store's sales performance.

The Utopia store should be booking at least $9,500.00 a day in gross sales. I am hereby placing you on notice that if you do not achieve this goal, I may be forced to take other disciplinary action against you, up to and including dismissal. Your prompt attention to this matter will be greatly appreciated.

cc: Personnel File

EXHIBIT 4

GANDER'S CLOTHIERS
Southeastern District
1072 Duck Ave., Suite 300
Atlanta, GA 30036
Telephone: 404-555-1234

TO: Aaron/Erin Wilson FROM: Sam Reynolds
DATE: December 17, 2005
RE: Your Employment with Ganders, Inc.

This memorandum is to inform you of the termination of your employment relationship with Gander's, effective immediately, for several reasons. As the General Manager of the Utopia store, you were ultimately responsible for the store's sales figures. You will recall that we previously discussed the store's poor performance on at least one other occasion.

On December 15, 2005, you allowed a customer to shop more than thirty minutes without ever acknowledging the patron, and then proceeded to make a rude remark as the customer brought merchandise to the cash register. For these reasons, I no longer have confidence that you are capable of portraying the image Gander's wishes to convey to its customers and employees.

To address several matters:

1. I understand your health insurance is likely to be of very real concern to you at this time. You will receive a letter under separate cover, which details your right to continue your coverage under Gander's group policy, at your expense, for a period of eighteen months, in accordance with COBRA.

2. Gander's will not oppose you if you file an application for unemployment benefits.

3. Requests for employment references should be directed to my attention. It is Gander's policy to limit responses to reference requests to confirmation of your dates of employment and last job title.

4. You should make arrangements with me to remove your personal belongings from the store at a mutually convenient time. You should also take this opportunity to notify me of the status of all pending job tasks.

Thank you for your past service to Gander's. Best wishes for a happy holiday season. cc: Personnel File

EXHIBIT 5

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before Completing this form.

AGENCY: FEPA / EEOC

CHARGE NUMBER: 1145-04-0017

Delaware Department of Labor and EEOC
State or Local Agency, if any

NAME (Indicate *Mr., Ms., Mrs.,*)	HOME TELEPHONE (Include *Area Code*)
Aaron/Erin Wilson	(302) 555-1234

STREET ADDRESS CITY, STATE AND ZIP CODE	DATE OF BIRTH
365 Williamson St., Utopia, DE 19000	May 11, 1979

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (if more than one list below.)

NAME	NUMBER OF EMPLOYEES, MEMBERS	TELEPHONE (Indicate Area Code)
Ganders, Inc.	5500	302-555-1212

STREET ADDRESS CITY, STATE AND ZIP CODE	COUNTY
2719 Arch Street, Utopia, DE 19000	Kent

NAME	TELEPHONE NUMBER (Indicate Area Code)
Ganders, Inc. (Alternate Address – Dist. Office)	(404) 555-1234

STREET ADDRESS CITY, STATE AND ZIP CODE	COUNTY
1072 Duck Ave., Suite 300, Atlanta, GA 30068	Fulton

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

RACE COLOR SEX RELIGION AGE

RETALIATION NATIONAL ORIGIN DISABILITY OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE EARLIEST (LATEST

CONTINUING ACTION

THE PARTICULARS ARE *(If additional paper is needed, attach extra sheet(s)):*

I believe I was discriminated against in violation of the Americans with Disabilities Act of 1990. My district manager (Sam Reynolds) knew that I had a disability (multiple myeloma) at least as early as November 17, 2005. On December 17, 2005, Reynolds terminated my employment, advising me that due to my physical appearance (caused by my multiple myeloma, I no longer projected the Gander's image.

I want this charge filed with both the EEOC and the State or Local Agency, if any, I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY (When necessary for State and Local Requirements)

1 swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief

I declare under penalty of perjury that the foregoing is true and correct.

Date 01/12/06 Charging Party *(Signature)*

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)

EXHIBIT 6

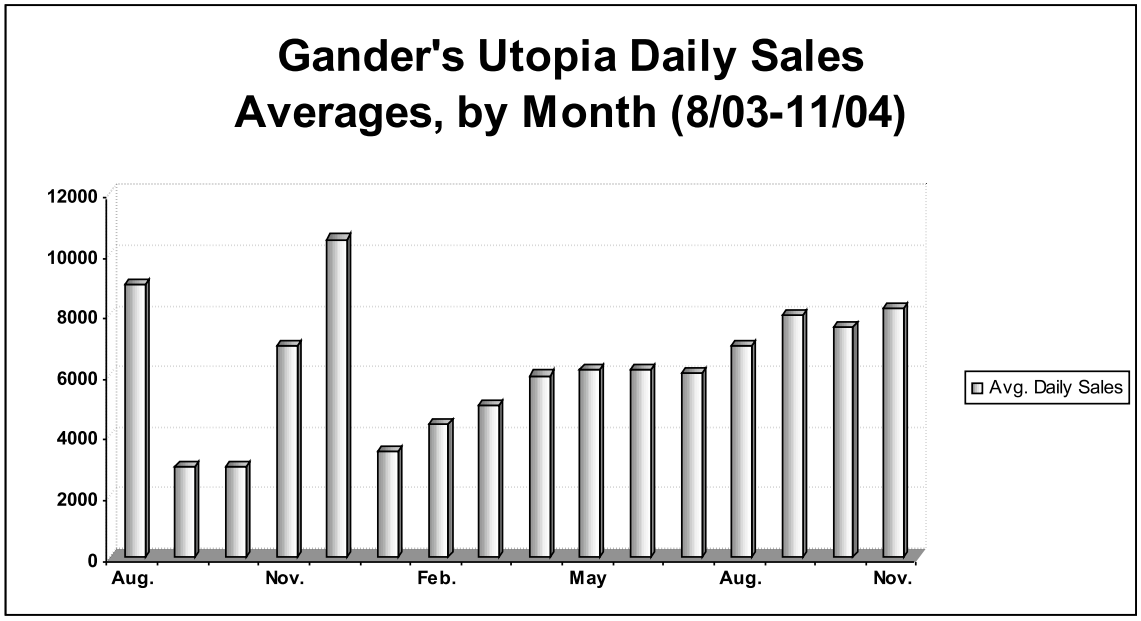
Gander's Utopia Daily Sales Averages, by Month (8/03-11/04)
12000
10000
8000
6000
4000
2000
0
Aug.
Nov.
Feb.
May
Aug.
Nov.
Avg. Daily Sales

Exhibit 7

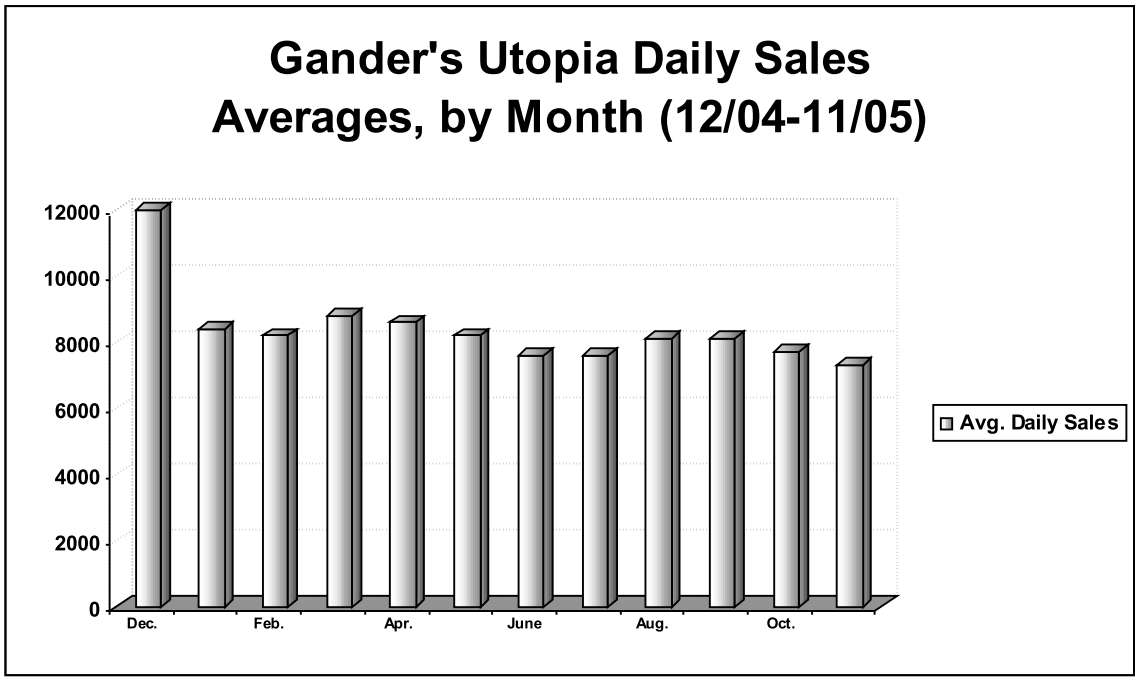
Gander's Utopia Daily Sales
Averages, by Month (12/04-11/05)
12000
10000
8000
6000
4000
2000
0
Dec.
Feb.
Apr.
June
Aug.
Oct.
Avg. Daily Sales

EXHIBIT 8

Sam Reynolds

From: D. Gusmer (dqusmer@yahoogle.com)
Sent; December 16, 2005
To: Sam Reynolds
Subject: Utopia Gander's

Thank you for talking with me this morning. As I told you in our telephone conversation, I went to the Gander's at the Utopia Mall yesterday evening. It was nearing closing time when I arrived.

As far as I could tell, there was only one employee working in the store. I do not recall the first initial, but the last name on the employee's nametag was "Wilson." This wasn't somebody I would have expected to see working in your store. This looked like somebody who belonged in the hospital - all pale and washed out.

I'm not particularly interested in seeing that this employee get in trouble, but you need to know what's happening in your store.

I wandered back and forth between merchandise racks for what seemed like forever. The employee never offered to help and instead just let me wander.

That's why I was so startled when I brought the merchandise up to the register, only to hear this Wilson person tell me, "I was beginning to think you weren't going to buy anything."

I was upset by the remark and I replied, "Come to think of it, you're right. I don't want to buy anything from you." I rushed out of the store.

I appreciate your offering to send me the $50.00 gift certificate. Perhaps I could trouble you to let me know a date when this employee is not working, so I can spend it without fear of running into "Wilson" again. My address follows:

D. Gusmer
123 Easy Street
Bethel Park, DE 28001

JURY INSTRUCTIONS

Now that you have heard the evidence and the arguments of counsel, it is my duty to instruct you about the law governing this case. Although you as jurors are the sole judges of the facts, you must follow the law stated in my instructions and apply the law to the facts as you find them from the evidence. You must not single out one instruction alone as stating the law, but must consider the instructions as a whole.

Nor are you to be concerned with the wisdom of any legal rule that I give you. Regardless of any opinion you may have about what the law ought to be, it would be a violation of your sworn duty to base a verdict on any view of the law other than what I give you in these instructions. It would also be a violation of your sworn duty, as judges of the facts, to base a verdict on anything but the evidence in the case.

Justice through trial by jury always depends on the willingness of each juror to do two things: first, to seek the truth about the facts from the same evidence presented to all the jurors; and, second, to arrive at a verdict by applying the same rules of law as explained by the judge.

You should consider only the evidence in the case. Evidence includes the witnesses' sworn testimony and the items admitted into evidence. You are allowed to draw reasonable conclusions from the testimony and exhibits, if you think those conclusions are justified in light of common experience. In other words, use your common sense to reach conclusions based on evidence.

You have been chosen and sworn as jurors in this case to decide issues of fact. You must perform these duties without bias for or against any of the parties. The law

does not allow you to be influenced by sympathy, prejudice, or public opinion. All the parties and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law, and reach a just verdict, regardless of the consequences.

In a civil case such as this one, the burden of proof is by preponderance of the evidence. Proof by a preponderance of the evidence means proof that something is more likely than not. Preponderance of the evidence does not depend on the number of witnesses. If the evidence on any particular point is evenly balanced, the party having the burden of proof has not proven that point by a preponderance of the evidence, and you must find against the party on that point.

In deciding whether any fact has been proved by a preponderance of the evidence, you may, unless I tell you otherwise, consider the testimony of all witnesses regardless of who called them, and all exhibits received into evidence regardless of who produced them. Each side has alleged that the other was negligent. Each side has the burden of proving their allegations of negligence.

Generally speaking, there are two types of evidence from which a jury may properly find the facts. One is direct evidence - - such as the testimony of any eyewitness. The other is indirect or circumstantial evidence - - circumstances pointing to certain facts.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts from all the evidence in the case: Both direct and circumstantial.

If you find that witness made an earlier sworn statement that conflicts with witness's trial testimony, you may consider that contradiction in deciding how much of the trial testimony, if any, to believe. You may consider whether the witness purposely made a false statement or whether it was an innocent mistake; whether the inconsistency concerns an important fact or a small detail; whether the witness had an explanation for the inconsistency; and whether that explanation made sense to you.

Your duty is to decide, based on all the evidence and your own good judgment, whether the earlier statement was inconsistent; and if so, how much weight to give to the inconsistent statement in deciding whether to believe the earlier statement or the witness's trial testimony.

A witness may be discredited by evidence contradicting what that witness said, or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

It's up to you to determine whether a witness has been discredited, and if so, to give the testimony of that witness whatever weight that you think it deserves.

You are the sole judges of each witness's credibility. That includes the parties. you should consider each witness's means of knowledge; strength or memory; opportunity to observe; how reasonable or unreasonable the testimony is; whether it is consistent or inconsistent; whether it has been contradicted; the witnesses' biases, prejudices, or interest; the witnesses' manner or demeanor on the witness stand; and all circumstances that, according to the evidence, could affect the credibility of the testimony.

If you find the testimony to be contradictory, you must try to reconcile it, if reasonably possible, so as to make one harmonious story of it all. But if you can't do this, then it is your duty and privilege to believe the testimony that, in your judgment, is most believable and disregard any testimony that, in your judgment, is not believable.

Expert testimony is testimony from a person who has a special skill or knowledge in some science, profession, or business. This skill or knowledge is not common to the average person but has been acquired by the expert through special study or experience.

First Issue: Prima Facie Discrimination

Before reaching the other substantive issues in the case, you must first consider whether the Plaintiff has established a prima facie case of discrimination in violation of the Americans with Disabilities Act of 1990 (the "ADA").

On this issue, the burden of proof is on the Plaintiff. More particularly, the Plaintiff must prove by a preponderance of the evidence that the Plaintiff is a qualified individual with a disability, (2) that s/he performed his/her job satisfactorily, and (3) that s/he suffered an adverse employment action.

In order to establish that s/he is a qualified individual with a disability, a Plaintiff must establish that although s/he is disabled, s/he can perform the essential function of his/her position with or without reasonable accommodation. One is disabled ifs/he has a physical or mental impairment that substantially limits his/her ability' to perform one or more major life activities. Such life activities may include, without limitation, things like caring for oneself, walking, seeing, hearing, reading, breathing, concentrating, or processing thoughts. The relevant inquiry is not whether the Plaintiff was disabled at the

time of the trial but, rather, whether the Plaintiff is disabled at the time employment action was taken.

Adverse employment actions shall include termination, demotion, or any other employment action resulting in the loss of the tangible benefits of employment. An adverse employment action by the supervisor is an action of the employer.

If you find the Plaintiff has failed to establish a prima facie case of discrimination in violation of the ADA, you must answer the first issue "NO" and proceed no further. If; however, you answer the first issue "YES," you must proceed to the second issue.

Second Issue: Legitimate, Non-Discriminatory Reason

The second issue you must consider is whether the Defendant had a legitimate, non-discriminatory reason for the adverse employment action taken against the Plaintiff. On this issue, the Defendant has the burden of production. Unlike a burden of proof, a burden of production does not require proof by a preponderance of the evidence. Rather, the Defendant satisfies the burden of production if it offers *some* evidence that its reason for the action was legitimate and non-discriminatory. In determining whether the Defendant's proffered reason for employment action is non-discriminatory, you may consider such factors as the industry in which the Defendant is engaged and the purpose or purposes for which the Defendant's business exists. It is not your role to second-guess the Defendant's business judgment. In and of themselves, errors in business judgment do not establish discrimination.

If the Defendant took action against the Plaintiff solely for a discriminatory purpose, you must answer the issue “NO” and proceed no further. If you find the

Defendant has offered a legitimate, non-discriminatory reason for the action, you must answer the second issue “YES” and proceed to the third issue. If you so find, the presumption of discrimination is eliminated and the Plaintiff bears the burden of proving by a preponderance of the evidence that the Defendant’s stated reason for the action was merely a pretext for discrimination.

Third Action: Pretext

If you resolve the second issue "YES" in favor of the Defendant, the third issue you must consider is whether the reason or reasons offered by the Defendant for the adverse employment action taken against the Plaintiff were pretextual. "Pretextual" means false or, though true, not the real reason for the action taken.

Here, the Plaintiff has the burden of showing that the Defendant had an unlawful, discriminatory motive in taking the action. The Plaintiff is not required to produce direct evidence of unlawful motive. You may infer knowledge and/or motive as a matter of reason and common sense from the existence of other factors, such as tendered explanations that you determine to be pretextual in nature.

If you find that the Plaintiff has proven that the proffered reason or reasons were pretextual, and that unlawful discrimination was a determinative or but-for cause of the adverse employment action, then you must resolve this issue "YES" in favor of the Plaintiff If you do not so find, you must resolve this issue "NO" in favor of the Defendant.

Your verdict must be unanimous. To assist you in your deliberations I have prepared a verdict sheet. Please following the instructions on the verdict and answer the questions as appropriate.

I have read a number of instructions to you. The fact that some particular point may be covered in the instructions more than some other point should not be regarded as meaning that I intended to emphasize that point. You should consider these instructions as a whole, and you should not choose any one or more instructions and disregard the others. You must follow all the instructions that I have given you.

Nothing I have said since the trial began should be taken as an opinion about the outcome of the case. You should understand that no favoritism or partisan meaning was intended in any ruling I made during the trial or by these instructions. Further, you must not view these instructions as an opinion about the facts. You are the judges of the facts, not me.

How you conduct your deliberations is up to you. But I would like to suggest that you discuss the issues fully, with each of you having a fair opportunity to express your views, before committing to a particular position. You have a duty to consult with one another with an open mind and to deliberate with a view to reaching a verdict. Each of you should decide the case for yourself, but only after impartially considering the evidence with your fellow jurors. You should not surrender your own opinion or defer to the opinions of your fellow jurors for the mere purpose of returning a verdict, but you should not hesitate to reexamine your own view and change your opinion if you are persuaded by another view.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE		
AARON/ERIN WILSON, Plaintiff, v. GANDER'S, INC. Defendant.	))))))))	Civil Action No. 1-06-CV-1

Verdict Sheet

1. Do you find that the plaintiff has established a prima facie case of discrimination in violation of the ADA?

Yes ____ No _____

If you answered question 1 "No," proceed no further. Contact the bailiff. Your decision is in favor of the defendant.

If you answered question 1 "Yes," proceed to question 2.

2. Do you find that the defendant had a legitimate non discriminatory reason for the adverse employment action taken against Plaintiff?

Yes ____ No _____

If you answered question 2 "No," proceed no further. Contact the bailiff. Your decision is for the plaintiff.

If you answered question 2 "Yes,", proceed to question 3..

3. Do you find that the defendant's reasons for firing the plaintiff were pretextual?

Yes ____ No _____

Delaware High School
Mock Trial Competition
2007

Rules of Competition

CONTENTS

DELAWARE HIGH SCHOOL MOCK TRIAL RULES OF COMPETITION

A. ADMINISTRATION

Rule 1.1. Rules

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

Questions or interpretations of these rules are within the discretion of the Mock Trial Committee of the Law Related Education Center (hereinafter "Mock Trial Committee"), whose decision is final.

Rule 1.2. Code of Conduct

The Rules of Competition, as well as proper rules of courthouse and courtroom decorum and security, must be followed. The Mock Trial Committee possesses discretion to impose sanctions, including but not limited to disqualification, immediate eviction from the Championship, and forfeiture of all fees and awards (if applicable) for any misconduct occurring while a team is present for the Championship, for rule violations, and for breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge or the mock trial program.

Rule 1.3. Emergencies

During a trial, the presiding judge shall have discretion to declare an emergency and adjourn the trial for a short period of time to address the emergency.

In the event of an emergency that would cause a team to be unable to continue a trial or to participate with less than six members, the team must notify the Mock Trial Committee as soon as is reasonably practical. If the Committee, or its designee(s), in its sole discretion, agrees that an emergency exists, the Committee, or its designee(s), shall declare an emergency and will decide whether the team will forfeit or may direct that the team take appropriate measures to continue any trial round with less than six members. A penalty may be assessed.

The Mock Trial Committee may, but does not have to, declare a forfeiture. If a forfeiture is declared, the forfeiting team will receive a loss and points totaling the average number of the ballots and points received by the losing teams in that round. The non-forfeiting team will receive a win and an average number of ballots and points received by the winning teams in that round.

Final determination of emergency, forfeiture, reduction of points, or advancement, will be made by the Committee.

Rule 1.4. Student Timekeepers

(a) Each team attending the NHSMTC, Inc. is responsible for providing one student as an official timekeeper equipped with two stopwatches. The official timekeeper may be a student who is not one of the official eight team members. In trial, each team is to use a

set of "Time Remaining" cards with the following designations to signal time: 20:00, 15: 00, 10:00, 5:00, 4:00, 3:00, 2:00, 1:00, 0:40, 0:20, and "STOP". Modification of intervals is not permitted. The host committee will provide "Time Remaining" cards and timekeeper instruction materials.

(b) Each team's official timekeeper is **required** to attend the scheduled on-site timekeeper orientation, which will be held on Thursday afternoon before competition rounds begin. If a team does not send an official timekeeper to the required orientation meeting, that team will defer to its opponents' official timekeepers in all rounds of the competition. The host committee, at its discretion, may schedule a make-up timekeeper orientation for Friday morning before rounds begin solely for teams that register for the tournament after the Thursday session.

B. THE PROBLEM

Rule 2.1. The Problem

The problem will be a 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.

The problem shall consist of three witnesses per side, all of whom shall have names and characteristics which would allow them to be played by either males or females. All three of the witnesses must be called.

Rule 2.2. Witnesses 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. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement. If, in direct examination, an attorney asks a question which calls for extrapolated information pivotal to the facts at issue, the information is subject to objection under Rule 2.3, "unfair extrapolation."

A witness is not bound by facts contained in other witness statements.

Rule 2.3. Unfair Extrapolation

A fair extrapolation is one that is neutral. Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial.

If a witness is asked information not contained in the witness' statement, the answer must be consistent with the statement and may not materially affect the witness' testimony or any substantive issue of the case.

Attorneys for the opposing team may refer to Rule 2.3 in a special objection, such as "unfair extrapolation" or "This information is beyond the scope of the statement of facts."

Possible rulings by a judge include:

a) No extrapolation has occurred;
b) An unfair extrapolation has occurred;
c) The extrapolation was fair; or
d) Ruling is taken under advisement.

The decision of the presiding judge regarding extrapolations or evidentiary matters is final.

When an attorney objects to an extrapolation, the judge will rule in open court to clarify the course of further proceedings.

Rule 2.4. Gender of Witnesses

All witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any student may portray the role of any witness of either gender.

Rule 2.5. Voir Dire

Voir dire examination of a witness is not permitted.

C. TEAMS

Rule 3.1. Team Eligibility

No institution may field more than one team except that a B team from the same institution can compete if there otherwise would be an odd number of teams competing. The B team will be picked by random draw.

Rule 3.2. Team Composition

Teams consist of at least 6 and up to 12 official members assigned to attorney, witness and timekeeper roles representing the prosecution/plaintiff and defense/defendant sides. **Six** of the official members will participate in any given round as attorneys and witnesses. (See Rule 3.3 for further explanation referring to team participation.) Additionally, a person will be designated as an official timekeeper. The official timekeeper may be (but need not be) one of the 12 official team members. The official timekeeper must be a student. The team's official student timekeeper will keep time for both sides during all competition rounds. At no time may any team for any reason substitute other persons for official team members. The Team Roster will become official at the time of **on site** registration.

Rule 3.3. Team Presentation

Teams must present both the Prosecution/Plaintiff and Defense/Defendant sides of the case, using six team members in each trial round. For each trial round, teams shall use three students as attorneys and three students as witnesses.

Rule 3.4. Team Duties

Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct examination and one cross-examination; in addition, one will present the

opening statements and another will present the closing arguments. In other words, the eight attorney duties for each team will be divided as follows:

1. Opening Statements
2. Direct Examination of Witness #1
3. Direct Examination of Witness #2
4. Direct Examination of Witness #3
5. Cross Examination of Witness #1
6. Cross Examination of Witness #2
7. Cross Examination of Witness #3
8. Closing Argument (including Rebuttal) [See Rule 4.5]

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

The attorney who examines a particular witness on direct examination is the only person who may make the objections to the opposing attorney's questions of that witness' cross-examination, and the attorney who cross-examines a witness will be the only one permitted to make objections during the direct examination of that witness. An attorney may not do the opening and the closing in the same trial.

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

Rule 3.5. Team Roster Form

Copies of the Team Roster Form must be completed and duplicated by each team prior to arrival at the courtroom for each round of competition. Teams must be identified by the code assigned at registration. No information identifying team origin should appear on the form. Before beginning a trial, the teams must exchange copies of the Team Roster Form. The Form should identify the gender of each witness so that references to such parties will be made in the proper gender. Copies of the Team Roster Form should also be made available to the judging panel and presiding judge before each round. Teams shall not knowingly disclose their place of origin to any member of the judging panel or to the presiding judge.

D. THE TRIAL

Rule 4.1. 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 4.2. Stipulations

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

Rule 4.3. Reading Into The Record Not Permitted

Stipulations, the indictment, or the Charge to the Jury will not be read into the record.

Rule 4.4. Swearing of Witnesses

The following oath will be used before questioning begins:

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

The above oath will be conducted by (a) the presiding judge or (b) a bailiff. The oath of all six witnesses will occur simultaneously at the beginning of each mock trial.

Rule 4.5. Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)

2. Direct and Redirect (optional) Examination. (25 minutes per side)

3. Cross and Re-cross (optional) Examination. (20 minutes per side)

4. Closing Argument (5 minutes per side)

The Prosecution/Plaintiff gives the opening statement first. The Prosecution/Plaintiff gives the closing argument first; the Prosecution/Plaintiff may reserve a portion of its closing time for a rebuttal. The Prosecution/Plaintiff's rebuttal is limited to the scope of the Defense's closing argument.

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.

Rule 4.6. Timekeeping

(a) Time limits are mandatory and will be enforced. Each team is required to provide one student who will serve as the official timekeeper for that team. Time for objections, questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements. Time does not stop for introduction of exhibits.

(b) At the end of each task during the trial presentation (i.e., at the end of each opening, at the end of each witness examination, at the end of each cross examination and at the end of each closing argument) if there is more than a 15 second discrepancy between the teams' timekeepers, the timekeepers must notify the presiding judge of the discrepancy. The presiding judge will then rule on the discrepancy, the timekeepers will synchronize their stopwatches accordingly and the trial will continue. No time disputes will be

entertained after the trial concludes. The decisions of the presiding judge regarding the resolution of time disputes are final.

Rule 4.7. Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. If time has expired and an attorney continues without permission from the Court, the scoring judges may determine individually whether or not to discount points in a category because of over-runs in time, including over-runs allowed by the presiding judge.

Rule 4.8. Motions Prohibited and Recesses

A motion for a recess may be used only in the event of an emergency, *i.e.*, health emergency. To the greatest extent possible, team members are to remain in place. Should a recess be called, teams are not to communicate with any observers, coaches, or instructors regarding the trial.

A short recess of 2 minutes at the close of all of the evidence but before closings will be granted. Team members should remain in place and there should be no communication outside the bar.

Rule 4.9. Sequestration

Teams may not invoke the rule of sequestration.

Rule 4.10. 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 4.11. Supplemental Material/Costuming

Teams may refer only to materials included in the trial packet. No illustrative aids of any kind may be used, unless provided in the case packet. No enlargements of the case materials will be permitted. Absolutely no props or costumes are permitted unless authorized specifically in the case materials. Costuming is defined as hairstyles, clothing, accessories, and make-up which are case-specific.

The only documents which the teams may present to the presiding judge or scoring panel are the individual exhibits as they are introduced into evidence and the team roster forms. Exhibit notebooks are not to be provided to the presiding judge or scoring panel.

Rule 4.12. Trial Communication

Coaches, teachers, alternates and observers shall not talk to, signal, communicate with, or coach their teams during trial. This rule remains in force during any emergency recess which may occur. Team members may, among themselves, communicate during the trial; however, no disruptive communication is allowed. Signaling of time by the teams' timekeepers shall not be considered a violation of this rule.

Coaches, teachers, alternates and observers must remain outside the bar in the spectator section of the courtroom. Only team members participating in this round may sit inside the bar and communicate with each other.

Rule 4.13. Viewing a Trial

Prior to the semifinal round, team members, alternates, attorney/coaches, teacher-sponsors, and any other persons directly associated with a mock trial team, except for those authorized by the Mock Trial Committee, are not allowed to view other teams' performances in the competition, so long as their team remains in the competition. No person shall display anything that identifies their place of origin while in the court room.

Rule 4.14. Videotaping/Photography

Any team has the option to refuse participation in videotaping, tape recording, and still photography by opposing teams.

Media coverage will be allowed.

Rule 4.15. Jury Trial

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

Rule 4.16. Standing During Trial

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

Rule 4.17. Objections During Opening Statement/Closing Statement

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

If a team believes an objection would have been proper during the opposing team's opening statement or closing argument, one of its attorneys may, following the opening statement or closing argument, stand to be recognized by the judge and may say, "If I had been permitted to object during opening statement/closing arguments, I would have objected to the opposing team's statement that _____." The presiding judge will not rule on this "objection."

Presiding and scoring judges will weigh the "objection" individually. No rebuttal by opposing team will be heard.

Rule 4.18. Objections

1. Argumentative Questions: An attorney shall not ask argumentative questions.

2. Lack of Proper Predicate/Foundation: Attorneys shall lay a proper foundation prior to moving the admission of evidence. After the exhibit has been offered into evidence, the exhibit may still be objected to on other grounds.

3. Assuming Facts Not in Evidence: Attorneys may not ask a question that assumes unproved facts. However, an expert witness may be asked a question based upon stated

assumptions, the truth of which is reasonably supported by evidence (sometimes called a "hypothetical question").

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

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

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

Teams are not precluded from raising additional objections which are available under the *Delaware High School Mock Trial Rules of Evidence*.

Rule 4.19. Reserved

Rule 4.20. Procedure for Introduction of Exhibits

As an example, the following steps effectively introduce evidence:

1. All evidence will be pre-marked as exhibits.

2. Ask for permission to approach the bench. “Your honor, may I approach the witness with what has been marked as Exhibit No.__?”

3. Show the exhibit to opposing counsel.

4. Ask the witness a series of questions that are offered for proof of the admissibility of the exhibit. These questions lay the foundation or predicate for admissibility, including questions of the relevance and materiality of the exhibit.

5. Offer the exhibit into evidence. “Your Honor we offer Exhibit No.___ into evidence.”

6. Court: “Is there an objection?” (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)

7. Opposing Counsel: “No, Your Honor” or “Yes, Your Honor.” If the response is “yes,” the objection will be stated for the record. Court: “Is there any response to the objection?”

8. Court: “Exhibit No. ___ (is/is not) admitted. If admitted, questions on content may be asked.

9. Court: “Is there an objection?” (If opposing counsel believes a proper foundation has not been laid, the attorney should be prepared to object at this time.)

Rule 4.21. Use of Notes

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial. Team members involved in that trial may consult with each other at counsel table verbally or through the use of notes.

Rule 4.22. Redirect/Recross

Redirect and Recross examinations are permitted, provided they conform to the restrictions in Rule 611(d) in the Delaware High School Mock Trial Rules of Evidence.

Rule 4.23. Scope of Closing Arguments

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

Rule 4.24. The Critique

The judging panel is allowed 10 minutes for debriefing. Presiding judges are to limit critique sessions to a combined total of ten minutes.

Judges shall not make a ruling on the legal merits of the trial. Judges may not inform the students of score sheet results.

Rule 4.25. Offers of Proof

No offers of proof may be requested or tendered.

E. JUDGING AND TEAM ADVANCEMENT

Rule 5.1. Finality of Decisions

All decisions of the judging panel are FINAL.

Rule 5.2. Reserved

Rule 5.3. Score Sheets/Ballots

The term "ballot" will refer to the decision made by a scoring judge as to which team made the best presentation in the round. The term "score sheet" is used in reference to the form on which speaker and team points are recorded. Score sheets are to be completed individually by the scoring 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 round. The ballot votes determine the win/loss record of the team for power-matching and ranking purposes. While the judging panel may deliberate on any special awards (i.e., Outstanding Attorney/Witness) the judging panel should not deliberate on individual scores.

Rule 5.4. Completion of Score Sheets

Each scoring judge shall record a number of points (1-10) for each presentation of the trial. At the end of the trial, each scoring judge shall total the sum of each team's individual points, place this sum in the Column Totals box, and enter the team ("P" for prosecution/plaintiff or "D" for defense/defendant) with the higher total number of points in the Tiebreaker Box. NO TIE IS ALLOWED IN THE COLUMN TOTALS BOXES. If the score sheet has a team points box a score of 1 through 10 is entered.

Rule 5.5. Team Advancement

In all Preliminary Rounds:

Teams will be ranked based on the following criteria in the order listed:

1. Win/Loss Record - equals the number of rounds won or lost by a team;

2. Total Number of Ballots - equals the number of scoring judges' votes a team earned in preceding rounds;

3. Total Number of Points Accumulated in Each Round;

4. Point Spread Against Opponents - The point spread is the difference between the total points earned by the team whose tie is being broken less the total points of that team's opponent in each previous round. The greatest sum of these point spreads will break the tie in favor of the team with the largest cumulative point spread.

In all non-preliminary rounds the team that wins the majority of the ballots advances to the next round.

Rule 5.6. Power Matching/Seeding

A random method of selection will determine opponents in the first round. A power-match system will determine opponents for all other rounds.

Power matching will provide that:

1. Pairings for the first round will be at random;

2. All teams are guaranteed to present each side of the case at least once;

3. Brackets will be determined by win/loss record. Sorting within brackets will be determined in the following order: (1) win/loss record; (2) ballots; (3) speaker points; then (4) point spread. The team with the highest number of ballots in the bracket will be matched with the team with the lowest number of ballots in the bracket; the next highest with the next lowest, and so on until all teams are paired;

4. If there is an odd number of teams in a bracket, the team at the bottom of that bracket will be matched with the top team from the next lower bracket;

5. Teams will not meet the same opponent twice prior to the semifinal round;

6. In the preliminary rounds, an A and B team from the same institution will not meet. Whenever possible when a team meets both the A and B team from the same institution the alignment of the second trial will be set up so the team plays the opposite side in the second trial.

7. To the greatest extent possible, teams will alternate side presentation in subsequent rounds. The Mock Trial Committee has the right to reseat teams within a bracket to ensure that teams have an opportunity to present each side of the case.

Rule 5.7. Selection of Sides For Championship Round

In determining which team will represent which side in the Championship Round, the following procedure shall be used:

1. The team with the letter/numerical code which comes first alphabetically (deleted) will be considered the “Designated Team.”

2. The coin will be tossed by a designee of the host state coordinator.

3. If the coin comes up heads, the Designated Team shall represent the plaintiff/ prosecution in the Championship Round. If the coin comes up tails, the Designated Team shall represent the defendant.

Rule 5.8. Odd Number of Teams Participating in Championship

In the event of a circumstance resulting in an odd number of competing teams, the following procedure will apply:

a. The team drawing the "bye" (no opponent for a single trial round) in the preliminary rounds will, by default, receive a win and three ballots for that round. For the purpose of power-matching, the team will temporarily be given points equal to the average of its own points earned in its preceding trials. At the end of the preliminary rounds, the average from all three actual trial rounds participated in by the team will be used for the final points given for that team's bye round.

For example, a team receiving a bye in round three would receive three ballots and an average of its points earned in rounds one and two. At the end of the fourth round, however, the points actually awarded to the team for the bye round will be adjusted to take into consideration the fourth round performance of the team.

b. A team receiving a bye in round one will be awarded a win, three ballots and the average number of points for all round one winners, which total will be adjusted at the end of each round to reflect the actual average earned by that team.

F. DISPUTE RESOLUTION

Rule 6.1. Reporting a Rules Violation/Inside the Bar

Disputes which occur within the bar must be filed immediately following the conclusion of that trial round. Disputes must be brought to the attention of the presiding judge at the conclusion of the trial.

If any team believes that a substantial rules violation has occurred, one of its student attorneys must indicate that the team intends to file a dispute. The scoring panel will be excused from the courtroom, and the presiding judge will provide the student attorney with a dispute form, on which the student will record in writing the nature of the dispute. The student may communicate with counsel and/or student witnesses before lodging the notice of dispute or in preparing the form.

At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. Only student attorneys may invoke the dispute procedure.

Rule 6.2. Dispute Resolution Procedure

The presiding judge will review the written dispute and determine whether the dispute should be heard or denied. If the dispute is denied, the judge will record the reasons for this, announce her/his decision to the Court, retire to complete his/her score sheet (if

applicable), and turn the dispute form in with the score sheets. If the judge feels the grounds for the dispute merit a hearing, the form will be shown to opposing counsel for their written response. After the team has recorded its response and transmitted it to the judge, the judge will ask each team to designate a spokesperson. After the spokespersons have had time (not to exceed three minutes) to prepare their arguments, the judge will conduct a hearing on the dispute, providing each team's spokesperson three minutes for a presentation. The spokespersons may be questioned by the judge. At no time in this process may team sponsors or coaches communicate or consult with the student attorneys. After the hearing, the presiding judge will adjourn the court and retire to consider her/his ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

Rule 6.3. Effect of Violation on Score

If the presiding judge determines that a substantial rules violation has occurred, the judge will inform the scoring judges of the dispute and provide a summary of each team's argument. The scoring judges will consider the dispute before reaching their final decisions. The dispute may or may not affect the final decision, but the matter will be left to the discretion of the scoring judges.

Rule 6.4. Reporting of Rules Violation/Outside the Bar

Disputes which occur outside the bar only during a trial round may be brought by teacher or attorney-coaches exclusively. Such disputes must be made promptly to a trial coordinator or a member of the Mock Trial Committee, who will ask the complaining party to complete a dispute form. The form will be taken to the tournament's communication's center, whereupon a dispute resolution panel will (a) notify all pertinent parties; (b) allow time for a response, if appropriate; (c) conduct a hearing; and (d) rule on the charge. The dispute resolution panel may notify the judging panel of the affected courtroom of the ruling on the charge or may assess an appropriate penalty.

The dispute resolution panel will be designated by the Mock Trial Committee.

Delaware High School
Mock Trial Competition
2007

Rules of Evidence

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DELAWARE HIGH SCHOOL MOCK TRIAL RULES OF EVIDENCE

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

Article I. General Provisions

Rule 101. Scope

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

Rule 102. Purpose and Construction

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

Article II. Judicial Notice

Not Applicable

Article III. Presumptions in Civil Actions and Proceedings

Not applicable

Article IV. Relevancy and its Limits

Rule 401. Definition of "Relevant Evidence"

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

Rule 402. Relevant Evidence Generally Admissible: Irrelevant Evidence Inadmissible

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

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

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

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

(a) Character Evidence. — Evidence of a person's character or *character trait*, is not admissible to prove *action regarding* a particular occasion, except:
(1) Character of accused. — Evidence of a pertinent character trait offered by an accused, or by the prosecution to rebut same;
(2) Character of victim. — Evidence of a pertinent character trait of the victim of the crime offered by an accused, or by the prosecution to rebut same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the aggressor;
(3) Character of witness. — Evidence of the character of a witness as provided in Rules 607, 608 and 609.

(b) Other crimes, wrongs, or acts. — Evidence of other crimes, wrongs, or acts is not admissible to prove character of a person in order to show an action conforms to character. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Rule 405. Methods of Proving Character

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

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

Rule 406. Habit; Routine Practice

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

Rule 407. Subsequent Remedial Measures

When measures are taken after an event which, if taken before, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose; such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Rule 408. Compromise and Offers to Compromise

Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct investigation or prosecution.

Rule 409. Payment of Medical or Similar Expenses

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

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

Except as otherwise provided in this Rule, evidence of the following is not, in any civil or criminal proceeding, admissible against a defendant who made the plea or was a participant in the plea discussions:
(1) a plea of guilty which was later withdrawn;
(2) a plea of nolo contendere;
(3) any statement made in the course of any proceeding under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the forgoing pleas; or
(4) any statement made in the course of plea discussions made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty which is later withdrawn.

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

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

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

Article V. Privileges

Rule 501. General Rule

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

(1) communications between husband and wife;
(2) communications between attorney and client;
(3) communications among grand jurors;
(4) secrets of state; and
(5) communications between psychiatrist and patient.

Article VI. Witnesses

Rule 601. General Rule of Competency

Every person is competent to be a witness.

Rule 602. Lack of Personal Knowledge

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

Rule 607. Who May Impeach

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

Rule 608. Evidence of Character and Conduct of Witness

(a) Opinion and reputation evidence of character. — The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence, or otherwise.

(b) Specific instances of conduct. — Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the Court, if probative of truthfulness or untruthfulness, be asked on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

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

Rule 609. Impeachment by Evidence of Conviction of Crime *(This rule applies only to witnesses with prior convictions.)*

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

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

(c) Effect of pardon, annulment, or certificate of rehabilitation. — Evidence of a conviction is not admissible if (1) the conviction has been the subject of a pardon or other equivalent procedure based on a finding of the rehabilitation of the person convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year, or (2) the conviction has been the subject of a pardon, other equivalent procedure based on a finding of innocence.

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

(e) Not applicable.

Rule 610. Religious Beliefs or Opinions

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

Rule 611. Mode and Order of Interrogation and Presentation

(a) Control by Court. — The Court shall exercise reasonable control over questioning of witnesses and presenting evidence so as to (1) make the questioning and presentation effective for ascertaining the truth, (2) to avoid needless use of time, and (3) protect witnesses from harassment or undue embarrassment.

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

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

(d) Redirect/Recross. — 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 on recross, but such questions must be limited to matters raised on redirect examination and should avoid repetition.

Rule 612. Writing Used to Refresh Memory

If a written statement is used to refresh the memory of a witness either while 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. Prior Statements of Witnesses

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

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

Article VII. Opinions and Expert Testimony

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Rule 702. Testimony by Experts

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 in the form of an opinion or otherwise.

Rule 703. Bases of Opinion Testimony by Experts

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

Rule 704. Opinion on Ultimate Issue

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

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

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

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

Article VIII. Hearsay

Rule 801. Definitions

The following definitions apply under this article:

(a) Statement. — A "statement" is an oral or written assertion or nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. — A "declarant" is a person who makes a statement.

(c) Hearsay. — "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. — A statement is not hearsay if:

(1) Prior statement by witness. — The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement and the statement is (A)

inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) Admission by a party-opponent. — The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course in furtherance of the conspiracy.

Rule 802. Hearsay Rule

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

Rule 803. Hearsay Exceptions, Availability of Declarant Immaterial

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

(1) Present sense impression. — A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited utterance. — A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then existing mental, emotional, or physical conditions. — A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for purposes of medical diagnosis or treatment. — Statements made for the purpose of medical diagnosis or treatment.

(5) Recorded Recollection. — A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly.

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(8) Public Records or Reports. — Records, reports, statements or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly reported activities, or matters observed pursuant to duty imposed by law.

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

(21) Reputation as to character. — Reputation of a person's character among associates or in the community.

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

Rule 804. Hearsay Exceptions; Declarant Unavailable

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

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or

(3) testifies to a lack of memory of the subject matter of the declarant's statement; or

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony) by process or other reasonable means.

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

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

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

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

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

(4) Statement of personal or family history. (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; (B) a statement concerning the foregoing matters, and death also, of another person, if the

declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

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

Rule 805. Hearsay within Hearsay

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

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

ARTICLE XI - Other

Rule 1103. Title

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

Delaware High School
Mock Trial Competition
2007

Rules Governing Teaching and Legal Advising

RULES GOVERNING TEACHING AND LEGAL ADVISING

1.The student presentations shall be the work product of the students themselves. It is important that the opening and closing arguments, direct and cross examinations, testimony and all other presentations be the students' work, rather than the narration of words prepared by an adult.

2.Legal advisors can help the team as constructive observers and critical teachers, by listening, suggesting and demonstrating to the team. A legal advisor should:

• Discuss the legal issues raised in the case;

• Answer questions concerning general trial practices;

• Explain the reasons for and the sequence of the events and procedures found in a trial;

• Listen to the students' approach to the case; and

• Discuss general strategies and raise key questions regarding the students' enactment of their roles in the trial.