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**2009**

**ALASKA HIGH SCHOOL  
MOCK TRIAL COMPETITION**

Anchorage, March 27-28, 2009

Boney Courthouse

**Alaska Children's Museum Corp.**

**v.**

**Happy Bear Studios, Inc.**

Case No. 5AK-08-99999 CI

**OFFICIAL CASE MATERIALS & COMPETITION RULES**

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**TEAM MEMBER'S PACKET**

Including all evidence, applicable law, competition rules, and team registration forms.

**Sponsored by the Anchorage Bar Association,  
Young Lawyers Section**

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### Author's Note

As part of its Alaska Day Kick-Off Celebration for a substantial new fundraising campaign, the Alaska Children's Museum invited Muktuk, the popular children's entertainer and star of the hit show Wake Up with Muktuk!, to perform. Muktuk is commonly performed by Robin Davies, though sometimes Robin's assistant Reese Mercer fills in. As expected, the event was well-attended by hordes of eager children. Less expected, Robin showed up drunk, at least according to Gerry Constantine, the executive director of the Museum. Robin, on the other hand, claims the poor performance was due to being sick with the flu. Did Robin breach the performance contract that day? Did Gerry defame Robin by telling reporter Lee James that Robin was drunk? These are the key questions that will be decided in the 2009 Alaska High School Mock Trial Competition in *Alaska Children's Museum v. Happy Bear Studios*. In addition to the above characters, you will also hear from: Officer Angel Martinez, who has had several run-ins with Robin, including one the night before the event; Dale Overstreet, Robin's former manager; and Devon Goldman and Asa Harmadi, two parents at the Museum on Alaska Day.

\* \* \* \* \*

The problem this year involves a breach of contract action. Breach of contract lawsuits are common in the legal profession, but this is the first time since I have been involved with Mock Trial that one has been the basis for a problem. One of the reasons for this is that breach of contract suits can often be very complicated, as they involve matters of interpretation of documents that often were not written very well to begin with and usually one or more affirmative defenses by the allegedly breaching party. An affirmative defense is a claim by the defendant that, if proven, absolves the defendant of liability. Students should look to the jury instructions to determine what needs to be proven by the Museum to succeed in their breach of contract action. I have attempted to simplify the affirmative defense portion of the problem by providing separate jury instructions for each affirmative defense advanced by Happy Bear Studios. The defendant has the burden of proving all required elements of an affirmative defense.

To make things even more interesting, I have also added a counterclaim for defamation. In effect, this means that there will be two trials going on at the same time. Happy Bear Studios will be required to prove all the elements of its claim for defamation, as well as counter any affirmative defenses offered by the Museum, in order to prevail on this claim. It will still be the case that the Museum, as the primary plaintiff, will present its case and all witnesses first, and Happy Bear Studios will present its case and all witnesses second. When playing the side of the Museum, students should anticipate what information will be necessary to counteract the defamation claim and incorporate the relevant facts and discussions into their initial presentation.

The jury will render separate decisions on both the breach of contract and defamation claims. Both claims revolve around essentially the same set of facts. However, because of the different elements required for each claim, it is entirely possible, though perhaps not likely, that neither side will prevail at trial. There are not separate jury instructions for the defamation

affirmative defenses because the affirmative defenses are already incorporated into the instruction for proving defamation.

As always, it will be up to the students to determine what information is important and what not. The key to any trial is focusing on a few key points to emphasize to the jury and making sure that the entire presentation revolves around those themes. As an introduction to the problem, I suggest starting by reading the newspaper article exhibit, which sets out the basics of the Alaska Day event at the Alaska Children's Museum. I would next turn to the affidavit for Robin Davies, which explains the character of Muktuk. I started the problem by writing this affidavit and developing the storyline therein, which to some extent explains why it is the longest affidavit. The remaining materials can be read in whatever order the reader prefers. Oh, also please ignore that the handwriting on the reporter's notes is the same as on the petition for a protective order, namely mine. (The petition for a protective order is an actual court form. Normally, there would be a corresponding six-page order from the judge in a similar format, but not surprisingly, that form is not publicly available. So, I improvised an order.)

The 2009 Alaska High School Mock Trial Competition is organized and sponsored by the Young Lawyers Section of the Anchorage Bar Association, and the efforts of its members are greatly appreciated in staffing the competition. I would especially like to thank Matt Block and Bill Falsey for assisting with the competition last year in my absence and for their continued support of Mock Trial. I would also like to thank Chris Slottee and Erin Egan for their volunteer efforts with the competition. Copyright for this problem is retained by Ryan Fortson, with non-monetary use granted to the Young Lawyers Section of the Anchorage Bar Association for the purpose of conducting the 2009 Alaska High School Mock Trial Competition. If you have any questions about the content of this problem, please feel free to contact me at [fortson@gci.net](mailto:fortson@gci.net). I hope you enjoy the problem for this year and find it challenging, and thank you for participating in the Mock Trial Competition.

Sincerely,  
Ryan Fortson

# **I. Legal Documents**

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS**

ALASKA CHILDREN'S	)	
MUSEUM CORP.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 5AK-08-99999 CI
	)	
HAPPY BEAR STUDIOS, INC.,	)	
	)	
Defendant.	)	
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**COMPLAINT**

**Introduction**

1. The Plaintiff, the Alaska Children's Museum Corp. (hereinafter, the "Museum"), brings this action for a breach of contract by Defendant Happy Bear Studios, Inc. (hereinafter "Studios") for failure to comply with the terms and conditions set forth in a contract for services on October 18, 2008 with and at the Museum.

**Jurisdiction**

2. The Court's jurisdiction over this matter is conferred by Alaska Statute 09.05.015.
3. Venue for this action is proper under Alaska Civil Rule 3.

**Parties**

4. The Plaintiff, Alaska Children's Museum Corp., is a non-profit corporation registered and existing under the laws of the State of Alaska. Plaintiff owns and operates the Alaska Children's Museum, which is located at 1212 Johnson Avenue, Alaskopolis, Alaska, 99999.

5. The Defendant, Happy Bear Studios, Inc., is a corporation registered and existing under the laws of the State of Alaska, and whose offices are located at 347 E. McNees Street,

Alaskopolis, Alaska, 99999. Studios owns the rights to the character Muktuk and produces the television show “Wake Up with Muktuk!”

### **Facts**

6. On or about August 7, 2008, Museum and Studios reached an agreement through their personal representatives whereby the character Muktuk would make an appearance at a function to be held at the Museum on October 18, 2008 (hereinafter the “Event”).

7. It was the understanding of the Parties that Robin Davies (hereinafter “Davies” or the “Performer”) would appear at the Event in the role of Muktuk.

8. The Artistic Services Agreement (hereinafter “Agreement”) signed by Davies and by Gerry Constantine, Executive Director of the Museum, specified the time, location, compensation, and manner of services to be provided by Davies.

9. The Agreement specified, and it was the understanding of the Parties, that the appearance by Muktuk at the Event would be as part of a fundraising campaign being conducted by the Museum.

10. The Agreement specified that the Performer was to appear and perform in a professional manner and according to the highest standards of professional decorum.

11. The Agreement specified the consequences if Muktuk was not able to appear at the Museum as promised.

12. Through promotional efforts, in which Davies participated, a significant number of tickets were sold to the Event and a significant number of patrons (including both parents and children) attended the Event.

13. On October 18, 2008, the Performer arrived at the Museum at the appointed time but in a physical state unable to perform as promised.

14. Davies insisted on performing and was allowed to perform as Muktuk in front of the assembled crowd at the Museum.

15. The performance given by Davies did not meet the commonly accepted performance standard for the character Muktuk. As such, the performance breached the terms set forth in the Agreement.

16. After the performance by Davies, several patrons of the Museum complained to management about said performance.

17. As a result of the performance by Davies, several patrons of the Museum were refunded monies paid in admission to the October 18, 2008 event and paid for membership in the Museum.

18. As a result of the performance by Davies, the Museum has suffered ongoing damage to its public reputation in Alaskopolis and to its levels of attendance and membership.

19. For the reasons stated in the above paragraphs, the Museum suffered actual monetary damages as a result of the performance by Davies, in an amount to be determined at trial.

### **Causes of Action**

20. The Defendant breached its contract with Plaintiff by failing to perform in a professional manner, as specified in the Agreement, on October 18, 2008 at the Museum.

### **Demand for Relief**

WHEREFORE, the plaintiff claims:

(a) A declaratory judgment holding that the Defendant's actions breached the Agreement it had with Plaintiff;

- (b) Actual and compensatory damages;
- (c) Punitive damages;
- (d) Reasonable attorneys' fees, including litigation expenses and costs; and
- (e) Such other relief as the interests of justice require.

DATED this 3rd day of November 2008 at Alaskopolis, Alaska.

ATTORNEYS FOR THE PLAINTIFF,  
ALASKA CHILDREN'S MUSEUM  
CORP.

By: \_\_\_\_\_ /s/ \_\_\_\_\_

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS**

ALASKA CHILDREN'S	)	
MUSEUM CORP.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Case No. 5AK-08-99999 CI
	)	
HAPPY BEAR STUDIOS, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
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**ANSWER AND COUNTERCLAIM**

**Answer**

1. Paragraph 1 is neither a statement of law nor a statement of fact and does not require a response. To the extent that Paragraph 1 is construed as a statement of law or fact, Defendant denies it in its entirety.

2. Defendant admits that this Court has jurisdiction over this matter.

3. Defendant admits that venue is appropriate for this action.

4. Defendant is without knowledge to admit or deny the factual statements in Paragraph 4 and therefore denies them in their entirety.

5. Defendant admits to the factual statement provided in Paragraph 5.

6. Defendant admits to the factual statements in Paragraph 6.

7. Defendant denies the allegations in Paragraph 7.

8. The Artistic Services Agreement (hereinafter "Agreement") signed by the Parties speaks for itself. To the extent that Paragraph 8 implies a particular interpretation of that Agreement, Defendant denies Paragraph 8 in its entirety.

9. The Agreement signed by the Parties speaks for itself. To the extent that Paragraph

9 implies a particular interpretation of that Agreement, Defendant denies Paragraph 9 in its entirety.

10. The Agreement signed by the Parties speaks for itself. To the extent that Paragraph 10 implies a particular interpretation of that Agreement, Defendant denies Paragraph 10 in its entirety.

11. The Agreement signed by the Parties speaks for itself. To the extent that Paragraph 11 implies a particular interpretation of that Agreement, Defendant denies Paragraph 11 in its entirety.

12. Defendant is without knowledge to admit or deny the factual statements in Paragraph 12 and therefore denies them in their entirety.

13. Defendant denies the allegations in Paragraph 13.

14. Defendant admits that Robin Davies performed at the Alaska Children's Museum on October 18, 2008 but otherwise denies the allegations in Paragraph 14.

15. Defendant denies the allegations in Paragraph 15.

16. Defendant is without knowledge to admit or deny the factual statements in Paragraph 16 and therefore denies them in their entirety.

17. Defendant is without knowledge to admit or deny the factual statements in Paragraph 17 and therefore denies them in their entirety.

18. Defendant denies the allegations in Paragraph 18.

19. Defendant denies the allegations in Paragraph 19.

20. Defendant denies that it breached its contract with Plaintiff.

### **Affirmative Defenses**

1. The Defendant offered, as permitted by the Agreement, to provide an alternate performer than Robin Davies for the event. Plaintiff could have avoided any and all damages by accepting this offer of an alternate performer.

2. Defendant offered, as permitted by the Agreement, to provide an alternate performer than Robin Davies for the October 18, 2008 event. Because this offer was rejected, Plaintiff has waived any claims to the inadequacy of the performance.

### **Counter-Claim**

1. Pursuant to a contract between Happy Bear Studios, Inc. (Counter-Plaintiff) and the Alaska Children's Museum Corp. (Counter-Defendant), Robin Davies performed as the character Muktuk at the Alaska Children's Museum on October 18, 2008.

2. The performance was witnessed by among others, Gerry Constantine, Executive Director of the Alaska Children's Museum.

3. At some point after the performance, Gerry Constantine, Executive Director of the Alaska Children's Museum, stated to a newspaper reporter that Robin Davies does not care about children.

4. Gerry Constantine knew or should have known that Robin Davies cares about children.

5. The statement that Robin Davies does not care about children is false, defamatory, and made with malice.

6. At some point after the performance, Gerry Constantine stated to a reporter that Robin Davies was drunk during the performance on October 18, 2008.

7. Gerry Constantine knew or should have known that Robin Davies was not drunk during the performance on October 18, 2008.

8. The statement that Robin Davies was drunk during the performance on October 18, 2008 was false, defamatory, and made with malice.

9. The statements referenced herein in Paragraphs 2 and 4 were subsequently published in a newspaper of general circulation.

10. The publication of these statements has caused damage to the public reputation of Robin Davies and the character Muktuk.

11. The diminished reputation caused by these statements has resulted in actual monetary damages to Happy Bear Studios.

#### **Cause of Action**

12. The Counter-Defendant made defamatory statements about Counter-Plaintiff, namely that Robin Davies does not care about children and that Robin Davies performed drunk at the Alaska Children's Museum on October 18, 2008.

#### **Demand for Relief**

WHEREFORE, the Counter-Plaintiff claims:

- (a) Actual and compensatory damages;
- (b) Punitive damages;
- (c) Reasonable attorneys' fees, including litigation expenses and costs; and
- (d) Such other relief as the interests of justice require.

DATED this 18th day of November 2008 at Alaskopolis, Alaska.

ATTORNEYS FOR THE  
DEFENDANT/COUNTER-PLAINTIFF,

HAPPY BEAR STUDIOS, INC.

By: \_\_\_\_\_/s/\_\_\_\_\_

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS**

ALASKA CHILDREN’S	)	
MUSEUM CORP.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
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v.	)	Case No. 5AK-08-99999 CI
	)	
HAPPY BEAR STUDIOS, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
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**ANSWER TO COUNTERCLAIM**

1. Counter-defendant, Alaska Children’s Museum Corp., admits the allegations in Paragraph 1 of the Counterclaim.
2. Counter-defendant admits the allegations in Paragraph 2 of the Counterclaim.
3. Counter-defendant denies the allegations in Paragraph 3 of the Counterclaim.
4. Counter-defendant denies the allegations in Paragraph 4 of the Counterclaim.
5. Counter-defendant denies the allegations in Paragraph 5 of the Counterclaim.
6. Counter-defendant denies the allegations in Paragraph 6 of the Counterclaim.
7. Counter-defendant denies the allegations in Paragraph 7 of the Counterclaim.
8. Counter-defendant denies the allegations in Paragraph 8 of the Counterclaim.
9. Counter-defendant denies the allegations in Paragraph 9 of the Counterclaim.
10. Counter-defendant denies the allegations in Paragraph 10 of the Counterclaim.

DATED this 3rd day of December 2008 at Alaskopolis, Alaska.

ATTORNEYS FOR THE PLAINTIFF,  
ALASKA CHILDREN'S MUSEUM  
CORP.

By: \_\_\_\_\_ /s/ \_\_\_\_\_

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS**

ALASKA CHILDREN'S	)	
MUSEUM CORP.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
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v.	)	Case No. 5AK-08-99999 CI
	)	
HAPPY BEAR STUDIOS, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
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**STIPULATIONS**

It is stipulated for purposes of this Mock Trial that the following facts have been properly introduced into evidence and may be relied upon by the parties in the presentation of their case:

I.

Alaskopolis, Alaska is a city of approximately 250,000 people. It is located in the Fifth Judicial District of Alaska. Jurisdiction for this trial is properly located in the Fifth Judicial District.

II.

The Parties stipulate that the type and amount of damages at stake reach the jurisdictional threshold for Alaska Superior Court.

III.

All pleadings have been properly filed and served to all other parties. Discovery has been conducted pursuant to the applicable Rules of Procedure, and no discovery violations are alleged. All other procedural matters have been properly conducted.

IV.

All affidavits are considered part of the case materials and may be used during trial for impeachment purposes and to refresh the memory of that particular witness. The affidavits have been validly signed and notarized.

V.

All exhibits included in these case materials are authentic and, where appropriate, validly signed. No objections to the authenticity of the exhibits will be entertained. Exhibits may otherwise be challenged for admissibility.

VI.

The Alaska Children's Museum stipulates that if no breach of contract is found by Happy Bear Studios, the Museum will owe Happy Bear Studios \$1,000 as payment for services provided.

VII.

The witnesses for the Plaintiff/Counter-Defendant are (in no particular order):

1. Robin Davies
2. Reese Mercer
3. Lee James
4. Devon Goldman

VIII.

The witnesses for the Defendant/Counter-Plaintiff are (in no particular order):

1. Gerry Constantine
2. Dale Overstreet
3. Officer Angel Martinez
4. Asa Harmadi

DATED this 12th day of January 2009 at Alaskopolis, Alaska.

ATTORNEYS FOR ALASKA  
CHILDREN'S MUSEUM CORP.

By: \_\_\_\_\_/s/\_\_\_\_\_

ATTORNEYS FOR  
HAPPY BEAR STUDIOS, INC.

By: \_\_\_\_\_/s/\_\_\_\_\_

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS**

ALASKA CHILDREN'S	)	
MUSEUM CORP.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Case No. 5AK-08-99999 CI
	)	
HAPPY BEAR STUDIOS, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
_____	)	

**JURY INSTRUCTIONS**

**FOUNDATIONAL INSTRUCTIONS**

**Introduction**

Members of the jury, you have now heard and seen all of the evidence in the case and you have heard argument about the meaning of the evidence. We have reached the stage of the trial where I instruct you about the law to be applied.

It is important that each of you listen carefully to the instructions. Your duty as jurors does not end with your fair and impartial consideration of the evidence. Your duty also includes paying careful attention to the instructions so that the law will properly and justly be applied to the parties in this case. You will have a copy of my instructions with you when you go in to the jury room to deliberate and to reach your verdict. But it is still absolutely necessary for you to pay careful attention to the instructions now. Sometimes the spoken word is clearer than the written word, and you should not miss the chance to hear the instructions. I will give them to you as clearly as I can in order to assist you as much as possible.

The order in which the instructions are given has no relation to their importance. The length of instructions also has no relation to importance. Some concepts require more explanation than others, but this does not make longer instructions more important than shorter ones. All of the instructions are important and all should be carefully considered. You should understand each instruction and see how it relates to the others given.

## **Direct and Circumstantial Evidence**

Evidence is either direct or circumstantial. Direct evidence, if you accept it as true, proves a fact. Circumstantial evidence, if you accept it as true, proves a fact from which you may infer that another fact is also true.

Let me give you an example. Let us pretend that as a juror you are asked to decide the following question: Did snow fall during a particular night? Direct evidence would be a witness testifying that the witness awoke during that night, went to the window, and saw the snow falling. From this evidence you could conclude that snow fell during the night.

Circumstantial evidence would be a witness testifying that the ground was bare when the witness went to sleep at 10:00 p.m., but the next morning when the witness awoke and looked out the window, the witness saw that the ground was covered with snow. From this evidence you could also conclude that snow fell during the night.

Facts may be proved by either direct or circumstantial evidence. The law accepts each as a reasonable method of proof.

## **Witness Credibility**

You have heard a number of witnesses testify in this case. You must decide how much weight to give the testimony of each witness.

In deciding whether to believe a witness and how much weight to give a witness's testimony, you may consider anything that reasonably helps you to evaluate the testimony.

Among the things that you should consider are the following:

- (1) the witness's appearance, attitude, and behavior on the stand and the way the witness testified;
- (2) the witness's age, intelligence, and experience;
- (3) the witness's opportunity and ability to see or hear the things the witness testified about;
- (4) the accuracy of the witness's memory;
- (5) any motive of the witness not to tell the truth;
- (6) any interest that the witness has in the outcome of the case;
- (7) any bias of the witness;
- (8) any opinion or reputation evidence about the witness's truthfulness;

- (9) any prior criminal convictions of the witness which relate to honesty or veracity;
- (10) the consistency of the witness's testimony and whether it was supported or contradicted by other evidence.

You should bear in mind that inconsistencies and contradictions in a witness' testimony, or between a witness's testimony and that of others, do not necessarily mean that you should disbelieve the witness. It is not uncommon for people to forget or to remember things incorrectly and this may explain some inconsistencies and contradictions. It is also not uncommon for two honest people to witness the same event and see or hear things differently. It may be helpful when you evaluate inconsistencies and contradictions to consider whether they relate to important or unimportant facts.

If you believe that part of a witness's testimony is false, you may also choose to distrust other parts of that witness's testimony, but you are not required to do so. You may believe all, part, or none of the testimony of any witness. You need not believe a witness even if the witness's testimony is uncontradicted. However, you should act reasonably in deciding whether you believe a witness and how much weight to give to the witness's testimony.

You are not required to accept testimony as true simply because a number of witnesses agree with each other. You may decide that even the unanimous testimony of witnesses is erroneous. However, you should act reasonably in deciding whether to reject uncontradicted testimony.

When witnesses are in conflict, you need not accept the testimony of a majority of witnesses. You may find the testimony of one witness or of a few witnesses more persuasive than the testimony of a larger number.

### **Evaluation of Evidence**

The weight to be given the evidence is for you to determine. You must examine the evidence carefully and decide how to evaluate it in light of the law that I have given you in these instructions. In your deliberations, you must not be governed by mere sentiment, unsupported conjecture, sympathy, passion, prejudice, public opinion, or public feeling. You should consider the evidence in light of your own common sense and observations and experiences in everyday life. But you may not consider other sources of information not presented to you in this court.

Your consideration of this case should be based solely on the evidence presented and the instructions I have given. The parties to this action are entitled to have a calm, careful, conscientious appraisal of the issues presented to you. Sympathy, bias or prejudice should not have the slightest influence upon you in reaching your verdict.

### **Burden Of Proof**

In this case, you will be asked to decide questions according to two different standards. In some questions you will be asked whether something is “more likely true than not true.” In other questions you will be asked whether there is “clear and convincing evidence” of something. I will now explain these terms to you.

An alleged fact is “more likely true than not true” if you believe that the chance that it is true is even the slightest bit greater than the chance that it is false. In more familiar language, an alleged fact is more likely true than not true if you believe that there is a greater than 50% chance that it is true. Fifty-one percent certainty is sufficient; no more is required for you to decide that the alleged fact is more likely true than not true.

An alleged fact is established by “clear and convincing evidence” if the evidence induces belief in your minds that the alleged fact is highly probable. It is not necessary that the alleged fact be certainly true or true beyond a reasonable doubt or conclusively true. However, it must be more than probably true.

### **Bifurcation**

In this trial, you will only be deciding whether liability exists for either Party. If you decide that either Party is legally liable for damages to the other Party, there will be a second trial to determine the amount of those damages. If damages are an element of a claim, then the existence of damages must be proven according to the appropriate burden of proof, but it is not necessary to prove the amount of those damages. In your deliberations today, you must disregard the monetary amount of any damages either Party may have suffered.

## PRIMARY CLAIM – BREACH OF CONTRACT

### **Breach of Contract**

The plaintiff, Alaska Children’s Museum, claims that the defendant, Happy Bear Studios, did not keep a promise that defendant had made as part of a contract signed by both parties. More specifically, the Museum claims that a representative of Happy Bear Studios did not perform the role of Muktuk in a wholly professional manner at an event at the Museum on October 18, 2008. It is up to you, the jury, to decide what professional standards are set forth in the contract between the parties and whether the performance by the representative met those professional standards.

For the Museum to win on this claim, you must decide that it is more likely true than not true that Happy Bear Studios failed to keep its promise. Otherwise, you must decide for Happy Bear Studios.

If you decide that it is more likely true than not true that Happy Bear Studios failed to keep its promise, then you must decide whether the law excuses defendant’s failure to keep the promise. I will now tell you how to decide if Happy Bear Studios was excused from keeping its promise.

### **Existence of Disputed Terms**

In this case the Museum and Happy Bear Studios agree that they entered into a contract. However, the Museum claims that, under the contract, Robin Davies promised to personally appear as the character Muktuk at an event at the Museum on October 18, 2008. Happy Bear Studios denies that this promise was made. You must decide whether this promise was made as part of the contract. A promise may be implied from conduct or words. The law does not require that the conduct or words be in any special form.

To find that a promise was made as part of the contract you must decide that it is more likely true than not true that:

- (1) Happy Bear Studios promised the Museum that Robin Davies would personally appear as the character Muktuk at an event at the Museum on October 18, 2008; and
- (2) This promise was made in exchange for something of value given or promised by the Museum.

If you decide that both things are more likely true than not true, then the promise was part of the contract. Otherwise, it was not part of the contract.

### **Affirmative Defense — Avoidable Consequences**

In this case, Happy Bear Studios claims that, with reasonable efforts and without undue risk, expense, hardship or embarrassment, the Museum could have avoided its losses in whole or in part, by allowing a substitute performer to play the character of Muktuk at the October 18, 2008 event at the Museum. If you decide that it is more likely true than not true that the Museum could have avoided its losses in whole or in part with reasonable efforts and without undue risk, expense, hardship or embarrassment, you may absolve Happy Bear Studios of any losses asserted by the Museum. However, if you find that it is more likely true than not true that the Museum could not have avoided its losses with reasonable efforts and without undue risk, expense, hardship or embarrassment, you must make an award to the Museum for its losses.

### **Affirmative Defense — Waiver by Election**

Happy Bear Studios claims that any failure on its part to keep its promises was excused because the Museum waived any claims to the inadequacy of the performance on October 18, 2008 by refusing to allow a substitute performer to play the character Muktuk. There are two kinds of waiver. Waiver can be expressed in words or implied by conduct. An implied waiver occurs when the plaintiff's conduct (a) indicates an intention to waive the right, or (b) is inconsistent with any intention other than to waive the right, or (c) prejudiced the defendant because plaintiff neglected to insist on the right.

Happy Bear Studios' failure to keep the promise is excused for this reason if it is more likely true than not true:

- (1) that the Museum knew that it had a right, under the contract, to accept a substitute performer capable of providing a comparable performance to the performer initially contracted for; and
- (2) that the Museum freely and intentionally waived that right.

If you decide that both of these things are more likely true than not true, then Happy Bear Studios is excused for its failure to perform according to the expectations by the Museum and

you must return a verdict for Happy Bear Studios. Otherwise, Happy Bear Studios is not excused for the alleged failure to meet its promise.

## COUNTERCLAIM – DEFAMATION

### **Defamation — Elements of Defamation Per Se**

In this case, the Happy Bear Studios claims that a representative of the Museum harmed the reputation of a piece of intellectual property owned by Happy Bear Studios, namely the character Muktuk, by making false statements about the actor playing Muktuk, namely Robin Davies. Those statements are as follows: (1) that Robin Davies does not care about children; and (2) that Robin Davies was drunk at a public performance at the Museum on October 18, 2008. For Happy Bear Studios to recover for defamation with regard to either of these statements, you must decide for each respective statement that it is more likely true than not true:

- (1) that a representative of the Museum communicated the statement, either orally or in writing, to a person other than the counter-plaintiff; and
- (2) that the statement was reasonably understood by this person to be about the counter-plaintiff; and
- (3) that the statement was capable of being proven either true or false; and
- (4) that the statement was false; and
- (5) that the statement caused actual financial harm to the counter-plaintiff.

In order for Happy Bear Studios to recover, you must also find by clear and convincing evidence that the Museum or its representative acted with actual malice. In order to find actual malice, you must find by clear and convincing evidence that when the Museum or its representative made the allegedly defamatory statement, either:

- (a) the Museum or its representative knew the statement was false; or
- (b) the Museum or its representative had serious doubts about the truth of the statement and therefore acted in reckless disregard of the probable falsity of the statement.

If you find that the elements of this instruction are satisfied, you must return a verdict for Happy Bear Studios. If you find that the elements of this instruction are not satisfied, you must return a verdict for the Alaska Children’s Museum.

## **II. Affidavits**

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS**

ALASKA CHILDREN’S	)	
MUSEUM CORP.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
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v.	)	Case No. 5AK-08-99999 CI
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HAPPY BEAR STUDIOS, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
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**Affidavit of Gerry Constantine**

1. My name is Gerry Constantine. I am forty-nine years old. I am married and have two children, both in college. I am currently the Executive Director for the Alaska Children’s Museum. The ACM focuses on presenting cultural and natural history lessons to Alaskopolis children ages 5-14, roughly. Of course, adults and kids of all ages are welcome to visit the Museum to see what we have to offer.
  
2. I started the Alaska Children’s Museum about four years ago because I felt it filled a vital niche within the civic life of Alaskopolis. As you might imagine, it was tough to start a museum from scratch. I did not have any background in museum management. I spent most of my life in public relations at one of the oil companies in town. After my daughter left for college – she was the second of my two children – I decided it was time for a change of pace in my life.
  
3. Over the first year I was able to raise close to half a million dollars. The money helped me build the collection for what would ultimately go in the Museum. It was not much of a collection at first. I just didn’t have the money to buy the Alaska Native artifacts and craftworks that I wanted for the Museum. Over time I will. I realize that growing the ACM is a project that is going to take the rest of my life. But I am happy to do it.
  
4. I’ve been hoping to expand the Alaska Children’s Museum. I knew this would require another substantial fundraising drive, coupled with an increase in Museum memberships. When I was doing my initial fundraising, it was enough to show the potential of the Museum. Now, I actually needed to show results. This means showing that the citizens of Alaskopolis really support the ACM and want its mission to continue and flourish. I decided that the perfect way to do this was to center the fundraising and membership drives with a celebration of Alaska’s 50th year of statehood. After all, one of the primary goals of the ACM is to increase awareness of Alaska history among our future leaders – our youth. I figured there would be enough media coverage of the 50th anniversary that it would be in parents’ minds and that when they realized there was a museum where their children could learn even more about Alaska statehood, they would take advantage of the opportunity.

5. So, I organized a fundraising and membership campaign that would run from Alaska Day on October 18, 2008 until January 3, 2009, the 50th anniversary of the day Alaska officially became a state. In the intervening time, the ACM would host kid-friendly lectures and other events to trace the history of the Last Frontier from its territorial handover from Russia to the United States to its admission into the Union. Each week, more or less, would be a different event. I was hoping that public awareness of the Museum would snowball, with ever more members joining and more and more charitable foundations and businesses willing to give ACM money. At least, that was my dream. I had no idea that Robin Davies would ruin it for me.

6. I knew I needed a headliner to start off the campaign. I spoke about this with my friend Dale Overstreet, who is involved in the burgeoning entertainment industry in Alaskopolis. Dale and I have known each other for a long time. In fact, my son dated his daughter for a bit in high school. I knew of course that Dale used to manage Muktuk. Dale suggested I give Robin Davies a call to see if s/he would be willing to make an appearance as Muktuk. Muktuk appeals to younger children, so that was a definite plus. In addition, Wake Up with Muktuk! was a wildly popular show in Alaska and was now starting to be carried nationally. All of the children I wanted to appeal to not only knew but loved Muktuk. To be honest, it was hard to think of a better choice to promote ACM and its campaign than Muktuk.

7. I was a little bit cautious, however, because Dale warned me that Robin couldn't always be depended upon. Dale said that Robin had a drinking problem and that you never knew when Robin would be sober and when s/he would be drunk. Dale did say that most of the time Robin would be fine, and there would be no problems. But, on occasion, Robin would show up at work – at the beginning of the day – inebriated. Dale told me that s/he had never witnessed Robin make a public appearance drunk, but s/he was afraid it would happen some day. Dale advised me to make sure that whatever contract I negotiated with Robin included protections for the Alaska Children's Museum in case Robin did in fact show up drunk.

8. I called Robin Davies on July 9 and first met with her/him on July 15. Robin was very receptive to the idea of making an appearance at ACM. I explained to Robin the fundraising and membership campaign I was planning for Alaska's 50th anniversary of statehood and that Muktuk's appearance would be vital to getting this effort started successfully. I also explained to Robin how the whole campaign would trace the history of Alaska from its territorial days to statehood. My goal for Muktuk was to talk about Alaska Day – the day on which Muktuk's appearance at the Museum would take place – and then emphasize to the children the importance of learning about Alaska history. I knew that any children who would beg their parents to come to the Museum to see Muktuk would definitely listen to what Muktuk had to say. And, hopefully, their parents would agree with the message Muktuk was giving and join the ACM.

9. Robin said that educating youth about Alaskan culture and history was one of the primary reasons s/he got into doing a television show, and that s/he'd be happy to be a part of the ACM Kick-Off Celebration. I asked Robin if this enthusiasm extended to waiving her/his normal appearance fee. Robin replied that while s/he wanted to help out as much as s/he could, being Muktuk was her/his job, and s/he could not just give away her/his talents for free. I guess I could understand this, but the Kick-Off Celebration was so important to the future of the Alaska Children's Museum that I begged Robin to make an exception just this once. I told her/him of my plans to center the advertising and other promotions leading up to the event around Muktuk's

image. I offered to allow Robin to keep all of the proceeds from the sale of Muktuk children's books after the show instead of having ACM keep 20% of the sales, as we usually do in our store. After much pleading on my part, Robin agreed to lower her/his appearance fee to \$1,000 and not to charge me for the recording of any promos. I don't know what Robin usually charges for Muktuk appearances, but Robin assured me that \$1,000 was well below the standard fee.

10. I asked Robin if s/he had an appearance contract that s/he used for Muktuk appearances. Robin told me that s/he did not and that the contract was usually drafted by the person or company organizing the appearance. I drafted an agreement based on a template that Dale gave me. I marked up the original with my changes, and my secretary typed it up and threw away the original. I knew I needed to make the contract with Happy Bear Studios, since that was the entity that controlled the Muktuk brand. However, I always felt that in essence I was making a contract directly with Robin Davies. I tried to call Robin once to run some of the language by her/him, but s/he didn't return my call. I guess maybe I was foolishly optimistic that everything would go well. I wasn't expecting any problems. I knew Robin understood what I was looking for out of the appearance, so I just put that language in the contract. We had agreed upon all of the details at our face to face meeting; it was just a matter of putting it on paper. Heeding Dale's warning, though, I made sure to put in some language emphasizing to Robin the importance of the Kick-Off Celebration and her/his appearance to the fundraising efforts of the Museum and the need to conduct the appearance in a highly professional manner.

11. I went down to Happy Bear Studios on August 7 to have Robin sign the contract. Robin only quickly glanced at the contract and did not ask me any questions about it. I assumed that Robin understood and agreed with everything I had written. And like I said, I wasn't expecting any problems.

12. Indeed, things started out fine. I almost immediately began my publicity efforts for the fundraising and membership campaign, sending out an email to current members telling them about Muktuk's appearance and encouraging them to give money and get other parents involved. Robin cooperated with me by recording a radio spot promoting the event toward the end of August. Then, a couple weeks later, Robin invited me to come down to the studio after one of the show tapings to film a television ad for the Kick-Off Celebration while s/he was still in costume. I drafted the basic text of both ads, but Robin made some suggestions to make them appeal more generally to the public. I would estimate that by the time of the Kick-Off Celebration, I probably spent close to \$4,000 on advertisements, which is what I had budgeted.

13. But, I would say these advertisements were worth it. The Museum received 104 new members – on a base of 539 members – between the time the membership drive began and the Kick-Off Celebration. Yearly memberships cost \$50 per family, so that more than made up for the advertising costs. I decided that for an event as big as an appearance by Muktuk, I was justified in charging a little bit extra from our normal entrance fee. Normally, we charge \$10 per family to enter the Museum. I find this a more friendly approach than charging per person, and indeed encourages more visitors. Of course, members get in for free. Sometimes parents will bring their kids' friends, but I always let them in with the group as well. I mean, the whole point of ACM is education, so I don't want to sweat the small details. I leave a donation jar near the entrance, and usually big families or parents bringing in groups of their child's friends will throw

a few extra dollars in the jar. The people of Alaskopolis are great about supporting their local cultural institutions.

14. For Muktuk's appearance, I decided to charge \$10 for member families and \$25 for non-member families. I did sort of hate to do this, because I mostly just wanted to introduce new families to the Alaska Children's Museum, but I knew that raising money would be necessary if I wanted to lay the foundation for future expansion. I was overwhelmed by the number of families that showed up for the Kick-Off Celebration. On a normal Saturday, we probably only have 25 or so families come through the Museum. Over the course of the entire day. Just for this one event alone we had 52 families show up, including 33 that were not already members. Nine of those non-member families joined on the spot. I had cleared all the exhibits I could from the large room on the lower level and placed what few chairs I had toward the back of the room for the parents. I was able to get a local event planning company to donate the use of about twenty or so additional chairs. Even with most of the children sitting on the floor in the front of the exhibit area, I barely had enough space to fit everyone. This was truly going to be a momentous day for the Alaska Children's Museum. In fact, my publicity was so effective that a reporter from the Alaskopolis News and Observer showed up without even being invited. I talked to him/her for a few minutes about the fundraising campaign that the ACM was just undertaking and how excited everyone was about the appearance by Muktuk. The crowds were just starting filter in, and you could see the eager anticipation on the faces of all of the children.

15. Then Robin Davies arrived. I had told Robin to arrive at the back door to the Museum about half an hour before the Celebration was to begin. As it approached 1:30, I told two of my staff members to find places for all of the visitors to sit or stand while I went to wait for Robin. Robin finally arrived at about 1:40. I could immediately tell that s/he was drunk. Oh, why didn't I listen more to Dale? Robin barged in, oblivious to the condition s/he was in. It was early in the afternoon, I couldn't believe that Robin was already drunk. I berated Robin for letting me down and for letting down all of the children who had arrived and were eagerly waiting to see their idol, their hero. Robin had the audacity to ask me what I was talking about. "You're drunk, Robin, you're drunk! I can't let you go out there like this!" I yelled back. I can't believe Robin actually said this, but s/he tried to tell me that s/he wasn't drunk but only suffering from a bad flu. Oh, please, like I couldn't tell the difference!

16. Just then, Reese Mercer, Robin's sidekick, showed up. I knew that Reese played the role of Clyde the Moose on the Wake Up with Muktuk! show and half expected her/him to show up in costume. But Reese was in plain street clothes. Robin said that if I was so unhappy with her/him, then Reese could play the role of Muktuk and do just as good a job. That was absolutely ridiculous. I made the appearance contract with Robin, and I expected Robin to live up to the terms of the contract!

17. Reese stepped in and tried to assure me that s/he could do the Muktuk character. Reese even did a little bit of the voice. I didn't think Reese's impersonation of Muktuk sounded anything like Robin's. And I knew the children wouldn't be fooled. Kids are often smarter than adults give them credit for. I was in a tough spot: Should I go for a sober but unconvincing knock off of Muktuk or the drunk version of the real thing? I decided that I had no choice but to send Robin out there and hope for the best. I told Robin that s/he was going to have to do the appearance as promised, but that I fully expected him/her to fail. I can't remember exactly what

I said to Robin – I was so angry. I think I said something about how Robin was forever going to ruin Muktuk for these children but that s/he had made this choice by coming to the Celebration drunk.

18. I was in such a state of shock that I couldn't pay much attention to Robin's performance in front of the children. All I could see was the sad and confused looks on their faces and the increasingly angry looks on the faces of their parents. It was like telling a bunch of true believers that there is no Santa Claus. That is how these kids saw Muktuk up to that point. I think most of the children in the audience were between four and eight years old and all very impressionable. I'm sure that most of them had been looking forward for the past couple weeks or longer to see Muktuk in person. Now their whole world had been shattered in the course of a few minutes. I think Robin even broke out of the Muktuk voice a couple of times. This caused a couple of the younger children to start crying. As bad as this debacle has been for the Alaska Children's Museum, I feel even worse for the children.

19. I had promised everyone in my promotions that children could come up after the appearance and meet Muktuk in person, including a free "pawprint" on a book or sheet of paper. A lot of the kids had brought Muktuk books. And my staff had sold a few others before the appearance. My hope was that on a one on one basis Robin would be more under control. I was wrong. I know s/he didn't mean anything by it, but Robin kept trying to hug the kids and was being a bit too forceful and aggressive about it. You know, wrapping those big furry arms around the kids when they weren't really ready for it. I think most of the children were scared by Muktuk. Robin did give out several "pawprints," but that did not smooth things over any. After about ten minutes, I realized this was not going to work and ushered Robin to the back.

20. I was furious with Robin. Reese was still out in the exhibit area trying to calm parents down and sell more merchandise. I like Reese and all, but I think that after such a poor showing by her/his boss, s/he'd want to leave as quickly as possible. But that is not where my attention was. My attention was on Robin. I told Robin to leave, that this had been a complete debacle, and that I hoped his/her career as Muktuk was over. Robin asked for the \$1,000 that was in the contract. I couldn't believe the gall of Robin to ask to be paid after what had happened. Then again, I don't think Robin really knew what s/he was saying at the time. Robin said that the contract we signed set out that s/he would be paid \$1,000 for the appearance, that s/he had made the appearance as promised, and that s/he expected both of us to live up to the terms of the contract. I was so appalled I just simply didn't know how to respond. I yelled at Robin to leave immediately and that no, I would not be paying him/her.

21. I went back out into the exhibit area to survey the damage further. No sooner did I get out there than that reporter from the newspaper came up to me. I had never met Lee James before, but I did recall seeing her/his byline on a few articles. Lee asked me why I had just pulled Muktuk off stage and whether Muktuk would be coming back. I told Lee that "Robin Davies doesn't care for kids as much as s/he would like you to believe" and that I made Robin leave to avoid further embarrassment. Lee asked me what I meant by this. I responded, "You saw the performance, you can draw your own conclusions." I went on to emphasize to Lee that despite having a disappointing beginning, the fundraising and membership campaign for the Alaska Children's Museum would continue and that there were many more great events to come. I don't know why Lee misquoted me in the article s/he wrote. I never told Lee that Robin was

drunk. I wanted to, but I knew well enough to keep my mouth shut. I think Lee just wanted to cause a sensation and sell newspapers. Or maybe s/he came to that conclusion on her/his own but just wanted to seem like a neutral observer. Whatever the reason, Lee James should learn to be a more careful, or perhaps just more honest, reporter.

22. Several parents came up to me after I got done talking to Lee and demanded their money back. I don't know why they would blame me for Robin being drunk, but I knew from my public relations days that it is best not to argue with customers. So, I made an announcement to everyone still there apologizing for Muktuk not feeling well and offering to give a refund to anyone who wanted it. I did, though, promise that this would never happen again and to consider letting the Alaska Children's Museum keep their donation. I'm not sure how many families were still there at this point – it had been almost 15 minutes since I forced Robin to leave. For some reason, Reese was still willing to show his/her face, but left quietly as soon as I made my announcement. I gave back refunds to 13 non-member families and 8 member families. What hurt more was that I gave back full membership refunds to two families that said they had joined the ACM just for the Muktuk appearance. But what could I do?

23. I felt awful for the kids, many of whom were still visibly upset. I tried comforting a few of them. I told them that everyone makes mistakes and that Muktuk would still be there for them next Saturday morning and would be the same Muktuk they always loved. I don't know if this worked or if Muktuk will ever be the same for these kids. I told Robin that s/he was going to ruin Muktuk for those children at the Celebration, and I think s/he may have done it.

24. It is hard to say what the impact was of Robin Davies' drunkenness on the rest of ACM's 50th statehood anniversary celebration and membership drive. The other events I had planned, mostly lectures and a few make-your-own-art types of things, did not draw nearly as well as the Muktuk appearance. But I knew they wouldn't. I got only 7 new member families after the Kick-Off Celebration, up until the final Statehood Jamboree, which was the other big event in the campaign. I was fortunate to arrange to have one of the remaining living members from the Alaska Constitutional Convention give a talk on what it was like to be a part of the exciting process of creating a new state. This event was very well attended – close to the number of families that showed up at the Muktuk event. And, I attracted 16 new member families at the event. Fundraising also dropped off significantly after the Kick-Off. Whereas I had been bringing in close to \$10,000 per month, on average, leading up to the Kick-Off, in the few weeks afterwards I was not able to raise any money. By December, though, interest in the Museum started picking back up, and I raised \$5,000 that month. I will always wonder, though, how much more successful my fundraising and membership campaign would have been if not for the negative publicity from the Kick-Off Celebration and Robin Davies' stupidity.

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS**

ALASKA CHILDREN'S	)	
MUSEUM CORP.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Case No. 5AK-08-99999 CI
	)	
HAPPY BEAR STUDIOS, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
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**Affidavit of Dale Overstreet**

1. I am Dale Overstreet. I am fifty-four years old, divorced, and I have one child – a twenty-five year old daughter named Gwen. I currently work as a television news producer for KAKP here in Alaskopolis. It is a bit of a step down for me. I should still be working for Happy Bear Studios and enjoying all of their success. I created Muktuk, and Robin has taken my creation away from me.

2. Robin and I used to be friends. I trusted Robin. What a fool I was. I knew Robin through some mutual friends – Greg and Martha Stanton. Occasionally, I'd see Robin at parties. S/He always seemed like a nice enough person. Then at a dinner party in February 2005, Robin told me about this fictional character that s/he had been using to tell bedtime stories to her/his son Jacob. Robin had recently gotten divorced, and it was very touching to me that Robin would make an effort to be such a good mom/dad.

3. I was working as a cameraperson and production assistant at KPLS, another television station here in Alaskopolis. I'd been there about six years. It was a second career for me. I had been in public relations prior to that, mostly working for an assortment of local non-profits.

4. When Robin told me about Percy, I knew I finally had the idea that would make me a big success. I had thought before about trying to produce some sort of show locally. I talked to my boss about it, and he had no problem letting me use the studio, as long as I kept a separate accounting of expenses and reimbursed the studio. Of course, I didn't know at the time that Percy would develop into Muktuk, but I could immediately see the appeal of a children's show based around a cartoonish bear.

5. I figured I had nothing to lose by suggesting it to Robin at that dinner party. Robin treated the offer politely, but didn't seem as enthusiastic about it as I was inside. My hopes were not too high. I knew that I myself just did not have the necessary creativity to write the stories or act out the character. My skills were more in promotion and set production. I've always been good with my hands. But the passion that Robin had that evening and the short snippets of stories s/he told – I knew I could meld that into something special. That is why I was so excited

when Robin called me back in April to ask if I was serious about doing a children's show and if I would be willing to shoot a pilot.

6. When I brought the idea back up with the station manager and reminded him of his promise to me, he suggested that I create a separate production company that could then lease studio time. This would be much easier from an accounting standpoint, the station manager said. It sounded like a good idea to me. I brought the idea up with Robin the next day. My intent was that we would form a joint partnership with equal shares. That seemed fair to me. I was the one getting the show off the ground and providing all of the promotional efforts, so I should have equal ownership with Robin. But, Robin did not see things this way. Robin was petty and wanted complete ownership of the Percy character. I should have seen this as a sign of bad things to come. At first I resisted giving Robin total ownership of Happy Bear Studios. At the time, though, things were still going relatively smoothly between us. I trusted Robin and did not see any trouble down the line. So, I relented and gave Robin complete ownership, but with me sharing half of the profits. We made my managing contract for two years because I figured after that time we would either be a success and I could re-negotiate, or it would be a failure and I could get out and leave Robin with all of the bills.

7. I knew from the beginning that if our show was to succeed, we would need to change the name of Robin's creation. "Percy" is just not the kind of name that is easily marketable. It sounds kind of stuck up and old-fashioned. Even at the beginning I had visions of taking the show national. The rest of America has always had a fascination with Alaska. So, I wanted to come up with a name that sounded uniquely Alaskan. I was reading a newspaper article about a whaling hunt in Barrow and saw the word "muktuk." I knew instantly that I had the name of my children's character. No, brown bears, which is what Robin insisted the main character remain, do not eat muktuk or have anything to do with it. I mean, I'm sure they would eat muktuk if given the chance. Anyway, that is besides the point. The point is that the name Muktuk is both Alaskan exotic and catchy. It took me no time at all after choosing the name to come up with "Wake Up with Muktuk!" for the show's title. Fortunately, I was able to convince Robin to go along with my suggestion for the character name.

8. Thanks mostly to my efforts, Wake Up with Muktuk! became a rapid success. Robin wanted to repay Alaska for the success of the show by going around to various locations around the state to film episodes. I saw this as a useless enterprise that would cost a great deal of money and would do very little to increase our ratings. If you look at our books, I think you will see that I was correct in my assessment. But, Robin insisted, and this was not something that I felt it was worth fighting. Since I was still the main cameraperson at the time, this meant that I had to travel around the state based on Robin's whims. I think the constant travelling was a contributing factor to my divorce.

9. It was also not very fun to travel with Robin because of her/his drinking problem. In a lot of these small towns there was not always a lot to do, especially when you didn't know anyone. So, while I was busy in the evenings setting up the camera and arranging what passed for a set, Robin would be back in the hotel drinking. Fortunately, we always slept in separate rooms, so I did not have to deal with the aftermath of Robin's drinking. At least, not that evening. In the mornings, as we would go through rehearsals for the show, you could often tell that Robin had a hang over and sometimes even a residual buzz. We usually filmed at around 1:00 in the

afternoon. I don't know how Robin made it through some of these shows. But, Robin did always seem to manage to pull through. And, I should say that it is not like Robin got drunk before every single taping. But, I *would* say that it happened about sixty percent of the time when we were on the road. Back in Alaskopolis, Robin did not get drunk nearly so frequently. I think this was mostly because Robin did not want to be drunk in front of Jacob.

10. As Muktuk became more popular, Robin started being asked to make personal appearances around Alaska. Not necessarily to film a show, but more to make an appearance at a toy store or library or something like that. Robin was usually glad to oblige. At first, we didn't charge for appearances, because we wanted to promote the show and the character. But after the first few, Robin decided, and reasonably so, that if s/he was going to give up his/her free time, especially on the weekends, s/he should be compensated for it. So, we started charging a couple hundred bucks for each appearance. I was not there to monitor things, and was of course afraid that Robin would show up at one of these appearances drunk. I never heard any complaints about this happening, but I figured it was just a matter of time before I did.

11. Things fell apart between me and Robin, not over Robin's problems with alcohol, but over Robin's desire to have increasing creative control over the direction of the show, especially after we started getting offers to make toys and clothing featuring Muktuk and do endorsements. I built the show to be a great success that first year and a half or so. I knew the end to my time with Happy Bear Studios was coming when Robin hired Reese Mercer to play a new character on the show. I felt we had a successful formula going and did not see any reason to disrupt it by adding a major new character to Wake Up with Muktuk! But Robin insisted. And not surprisingly, Robin hired one of his/her friends to play the role. Reese will do anything to protect Robin. You can't trust a word Reese says about Robin. Whenever Robin and I would have a disagreement, Reese would agree with Robin and Robin would think that s/he was in the right. Before too long, what with Reese affirming Robin's opinions all the time, Robin didn't think s/he could do any wrong. I grew into nothing more than a nuisance to Robin. There was no reason for Robin to listen to me with Reese around.

12. It was not too long after Reese came on board that we started to receive serious inquiries about a national syndication deal. This is what I had been working toward my whole time with Wake Up for Muktuk! It was me who had built the show to the place where it could go national, and now that this was finally happening, the show was being torn away from me. It can take a while for these national syndication deals to be finalized, so I was not able to enjoy very many of the financial benefits of our success. I started negotiations with several syndicators in late October 2007, but could not finalize anything. To be honest, I didn't try too hard because I figured I wouldn't be around much longer.

13. My contract with Happy Bear Studios was due to expire on December 5, 2007. In the middle of November, I talked to Robin about renewing my contract to manage Happy Bear Studios. I reminded Robin about all I had done to build Wake Up with Muktuk! into an Alaska success story and how I was already showing that I could take this success national. I reminded Robin that without me, the show never would have gotten off the ground – that it was my idea for Robin to do the show in the first place. But Robin seemed unfazed by any of this. I think Robin could see getting more money from this budding national roll-out of Muktuk if I left. Maybe Reese put Robin up to this to get her/his own cut of the money. All I know is that my

contract wasn't renewed, I was out, and soon Robin had a new agent out of California. I felt insulted and abandoned.

14. I've known Gerry Constantine for many years. We met back when we were both in public relations. Our families became good friends, and our children even dated briefly while in high school. I have a great deal of respect for what Gerry is trying to accomplish with the Alaska Children's Museum. Gerry is more than capable of building that museum all on his/her own, but occasionally Gerry runs ideas by me to see if I have any thoughts on how to promote the museum.

15. It was back in late June 2008 that Gerry and I were discussing the fundraising campaign that the museum was about to undertake, centered around the 50<sup>th</sup> anniversary of Alaska statehood. I thought this was a great idea and tied in well with the museum's mission. Gerry asked me if I had any ideas for what to do for a kick-off celebration. Given that the Alaska Children's Museum markets to children who, at least some of them, are in the target market for Wake Up with Muktuk!, I suggested to Gerry that s/he give Robin a call to see if s/he would be willing to make an appearance as Muktuk. I still feel a great deal of resentment for Robin, but s/he is generally good at speaking with children. More importantly, I knew that having Muktuk at the museum would draw a big crowd of eager children. I did, however, caution Gerry about Robin's drinking problem, and suggested that Gerry take into account the risk that Robin might show up hung over or even drunk. I told Gerry about some of the many times I had witnessed Robin drunk. I did tell Gerry that I had never seen Robin drunk at a public appearance, but that I was afraid it would happen one day. That is why I advised Gerry to make sure that any contract negotiated with Robin include specific language that Robin was not to drink for twenty-four hours prior to the start of the performance. Gerry was so excited, though, about the idea of having Muktuk at the museum that I'm not really sure s/he heard my warning.

16. Back when I was managing Robin and the Muktuk character, I used to handle all of the contracts for personal appearances. Robin doesn't have an interest in those kinds of things and will pretty much just sign anything you put in front of him/her. After Gerry got Robin to agree to appear at the kick-off, s/he called me up and asked me if I had any sample contracts s/he could use. All I could offer to Gerry was a generic template I sometimes used, which I sent to over to him/her. I again cautioned Gerry to make sure that there were provisions in the contract to protect against Robin not being able to perform at the Kick-Off Celebration up to Gerry's expectations.

17. I didn't think too much about the event after that. But as Alaska Day drew closer, I saw a couple of the advertisements Gerry had made and remembered what was going on. Thinking about how much effort Gerry must be putting into it, I felt it would be a shame if the Kick-Off Celebration did not get the publicity it deserved. Especially with how important this event was to the whole fundraising campaign for the museum. So, a couple days before the event I called up Lee James, the reporter for the Alaskopolis News & Observer who typically handles these kinds of stories. Plus, I knew that Lee had written a few stories on Muktuk's growing popularity. Lee asked me, as any good reporter would, why s/he should cover the Alaska Day celebration. I told Lee about all the good work the Alaska Children's Museum was doing and about how this celebration was the beginning of an important fundraising campaign for it. I knew, though, that the real selling point was the appearance by Muktuk. Lee really seemed to perk up when I told

him/her about this. I tried to drive the point home by saying that the celebration was sure to be newsworthy. When I hung up the phone, I wasn't sure if Lee would actually be at the museum on Alaska Day. I meant to tell Gerry about calling Lee, but I sort of forgot. Plus, I didn't want to get Gerry's hopes up in case Lee didn't show.

18. The day before the Kick-Off Celebration, I happened to be in Wendell's having a drink when I noticed Robin at a table across the room. I was in a good mood, and to be honest, I was a bit proud of Robin for agreeing to appear at the Alaska Children's Museum for Alaska Day, so I approached Robin and offered to buy her/him a drink. I think this may have been the first time I talked to Robin after leaving Happy Bear Studios. Robin was a bit apprehensive at first, but when s/he was sure I would be the one paying for the drink took me up on the offer. I didn't think much of it at the time. I certainly wasn't trying to get Robin drunk. Despite this good will gesture, I still didn't have much to say to Robin, so I left pretty soon after her/his drink arrived.

19. I was sorry to hear about what happened with Robin at the museum's Alaska Day celebration. Not surprised, but sorry nonetheless. I wasn't there, but there is no doubt in my mind that Robin was drunk. In retrospect, I guess I of all people should have known better than to buy Robin that drink the night before. I guess Robin just couldn't stop himself/herself. I just hope that this is the final straw that convinces Robin to get some help for his/her drinking problem.

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS**

ALASKA CHILDREN'S	)	
MUSEUM CORP.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Case No. 5AK-08-99999 CI
	)	
HAPPY BEAR STUDIOS, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
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**Affidavit of Officer Angel Martinez**

1. My name is Angel Martinez, age 46. I am married with two wonderful children. I am a seventeen year veteran with the Alaskopolis Police Department, where I have achieved the rank of Officer. It has been a great job, and I am so proud to have been given the opportunity to serve the people of Alaskopolis.
  
2. During my time on the force I have had a couple of run-ins with Robin Davies, always over situations involving alcohol. My first encounter was back in March 2004. I responded to an incident at The Pickled Olive, a popular bar in Alaskopolis. Robin had gotten drunk on a Friday night and started a fight with another patron. When the owner of the bar called 911, he said that Robin and the other patron were screaming wildly at each other. The incident had not at that point escalated into violence, but the owner was afraid it would and wanted police assistance to remove the two patrons from the premises.
  
3. I was on duty that evening and responded to the call. When I walked into The Pickled Olive, I saw Robin standing in the middle of the room swinging her/his arms as if boxing with an imaginary foe. I was informed by the owner of the bar, who I knew from previous calls to that establishment, that the other patron had left voluntarily, but that Robin refused to leave. I instructed Robin to calm down, but s/he responded that I did not know what s/he was going through and that I needed to "back off." I could tell that there was no point in trying to reason further with Robin. I approached Robin, pinned one of her/his arms behind her/his back, and escorted her/him to my squad car. I brought Robin down to the station and arraigned her/him on a charge of public drunkenness. Robin spent the night in jail. Because Robin at that time had no other record of public drunkenness, s/he was released the next morning and no charges were filed.
  
4. From reviewing police records, Robin was arrested twice more in The Pickled Olive for public drunkenness over the course of the next three years. I did not personally respond to any of these calls. However, it is my understanding from a subsequent conversation with the owner of The Pickled Olive that Robin has been banned from the bar.

5. I was also the officer who responded in August 2006 to a domestic violence situation involving Hayden Davies, Robin's ex-husband/wife. Hayden called 911 immediately after an altercation with Robin, wanting to make a police report. I responded to the call. My understanding is that Robin had already left by the time Hayden called 911, and Robin was not at Hayden Davies' house when I arrived.

6. When I arrived at Hayden's house, s/he was noticeably upset. Not crying, more agitated. I asked Hayden what had happened. Hayden explained that Robin had come over to his/her house uninvited and was drunk. Hayden told me s/he asked Robin to leave, but he would not do so. Hayden told me that s/he was sometimes afraid of Robin when s/he became drunk and that this was one of the main reasons the two of them divorced. I reminded Hayden that I was only there regarding what had happened that night and did not want to discuss his/her divorce.

7. Hayden proceeded to tell me that s/he and Robin had been having a fight over child support. Hayden stated that s/he thought Robin might be cheating her/him out of money earned from the success of Robin's show. At that point, Hayden told me, Robin began to get more animated. Robin apparently started shouting that Hayden was just greedy and "needed to be taught a lesson." Hayden told me s/he tried to calm Robin down by imploring him/her not to wake their son Jacob. Robin then reportedly said, "You stole Jacob from me! We could be a loving family if only you would go along with it!"

8. Hayden told me s/he was afraid that Robin would start to get violent. Hayden claims that Robin grabbed an ornate glass vase from a table near the front door and began waiving it around in the air. Robin started motioning as if s/he was going to strike Hayden with the vase, but then threw it against the wall, shattering it to pieces. I could still see the shattered remains of the vase when I arrived at Hayden's house.

9. After hearing Hayden's story, I advised him/her that s/he could obtain a protective order the next day at the courthouse. I asked Hayden if s/he felt safe that evening. Hayden said that s/he did and that s/he did not think Robin would return. Finally, I asked Hayden if s/he wanted me to arrest Robin. Given Hayden's description of events, I did not feel it necessary to arrest Robin, but given Robin's history of intoxication, I was willing to go to Robin's house to assess the situation. If nothing else, I was sure that Robin was driving drunk, though by that point this was probably impossible to prove. Regardless, Hayden informed me that s/he did not want to see Robin arrested over what had happened and that s/he felt Robin would calm down in the morning once s/he had the opportunity to sober up. I decided not to pursue the matter further.

10. Upon reviewing the court records, it appears that Hayden did go to court the next day and obtain a protective order. Domestic violence is a very serious problem in Alaska, and I am always glad to see its victims use court resources to improve their situation. Hayden only sought a short-term ex parte order. Moreover, for reasons that are unclear from the court records, Hayden withdrew even this short-term order a week later. I hope this means that Hayden and Robin were able to work out their differences and that Robin was no longer a threat to Hayden.

11. After this domestic violence incident, I did not personally respond to any calls regarding Robin until October 17, 2008. I understand that the final incident at The Pickled Olive occurred after the August 2006 domestic violence call, but I did not personally respond to that incident at

The Pickled Olive. On October 17, 2008, however, I was called to a different establishment, again because Robin was drunk.

12. At about 9:15 in the evening, the manager of Wendell's called the Alaskopolis Police Department seeking assistance to remove a drunk individual from the premises. I was on duty at the time and responded to the call. I did not know prior to arriving at Wendell's that the call was made in regards to Robin Davies. When I arrived, however, I immediately recognized Robin. Robin was sitting at a booth, a few plates still scattered in front of her/him. And an assortment of glasses – two beer mugs, one martini glass, two larger cocktail glasses, and three shot glasses. This was enough alcohol to get several people drunk, let alone one.

13. Robin was clearly drunk that evening. Robin was wailing about how lonely s/he was and how no one loved him/her. I do not remember the exact words. They were for the most part too incoherent to repeat sensibly anyway. I do, however, remember Robin saying something along the lines of, "All the kids love me . . . but they love Muktuk, not the real me . . . this is the real me . . . I want kids to know the real me . . . and love me for me." This type of self-loathing is not uncommon among people when they are drunk. And Robin was very drunk. If not from words alone, I could also see this in Robin's eyes, which were glazed over and half-closed.

14. I approached Robin and told her/him it was time to go. "Where?" Robin asked. "Home" I told Robin. Robin was surprisingly cooperative from that point forward. I am not sure what efforts Wendell's manager made to try to get Robin to leave, but Robin did not seem to be in a combative mood. This surprised me, based on my previous encounters with Robin. I asked the manager if Robin had paid her/his bill and was told s/he had. I then escorted Robin out of the restaurant. Robin even shouted an "I'm sorry" as we were leaving.

15. I probably should have arrested Robin for public drunkenness that evening. There was clearly cause to do so. But because Robin was not combative and perhaps even a bit remorseful, I decided to use my discretion not to. There happened to be a cab waiting outside Wendell's. I asked Robin if s/he had enough money for a cab ride home. S/He pulled out his/her wallet and showed me that s/he did indeed have enough money for a cab ride and then some. So, I helped Robin into the cab and off it went.

16. I have been to several alcohol awareness trainings. One of the things I learned there is that if you have enough alcohol in the evening, it is possible to wake up the next morning and still be drunk. Alcohol is metabolized at the rate of approximately one glass of wine or one-half pint of beer per hour. Robin appears to have had eight drinks, though the meal would help absorb some of the alcohol. It is entirely possible that Robin woke up the next morning residually drunk. At the very least, I'm sure Robin had a major hangover.

17. Unfortunately, people who have a problem with alcohol often drink to try to "cure" a hangover. This of course is the wrong solution and only exacerbates the problem even more, but it is the choice that many alcoholics make. I was not at the Alaska Children's Museum on Saturday, October 18, but from my prior encounters with Robin, and with the depression Robin seemed to be suffering from at Wendell's, it would not surprise me if s/he started drinking again in the morning and was drunk at the Kick-Off Celebration.

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS**

ALASKA CHILDREN'S	)	
MUSEUM CORP.,	)	
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Plaintiff/Counter-Defendant,	)	
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v.	)	Case No. 5AK-08-99999 CI
	)	
HAPPY BEAR STUDIOS, INC.,	)	
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Defendant/Counter-Plaintiff.	)	
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**Affidavit of Asa Harmadi**

1. I am Asa Harmadi. I am forty years of age, married, and have a five-year-old son named Thomas. My husband/wife and I own and operate a small restaurant here in Alaskopolis. We do not make much money, but we are able to get by. It is very hard work, though, with not much time off.
2. Thomas was a big fan of Muktuk until that incident on Alaska Day. Thomas is no longer a fan of Muktuk, and I will not let Thomas watch that awful show. That wo/man who plays Muktuk should be ashamed of herself/himself. I told her/him that. Performing in front of children drunk. Shameful! My father was an alcoholic and beat me as a child because of it. I despise alcohol and do not want to be around it. I hope I can raise Thomas to be the same way.
3. I joined the Alaska Children's Museum close to two years ago. I thought it would be a nice wholesome place for Thomas to learn about science and culture. We would go to the Museum every two or three months. At Thomas's age, he does not mind seeing the same exhibits more than once. The exhibits do not change much at the Museum. They should have more variety. It could be a much better museum if more time and money was spent on the quality of the exhibits.
4. Because I am a member of the Museum, I would get a newsletter every three months. On the cover of the newsletter that arrived in September was a big picture of Muktuk. I was excited to see that Muktuk would be coming to the Museum for Alaska Day because I knew that it would make Thomas happy. Before the Alaska Day incident, Thomas watched Wake Up with Muktuk! every Saturday morning. Thomas loved the show. I would take Saturday as my day off while my wife/husband worked at the restaurant. After the show was over, Thomas would come into the living room, where I was usually reading the newspaper, and recite to me what he could remember about the myth or story that was told on that episode. Thomas learned a great deal about Alaska culture from Muktuk.
5. On the Saturday morning after I received that newsletter, after Thomas came into the living room and told me about that morning's show, I gave Thomas the newsletter. He jumped around in joy and yelled happily. Thomas asked me if we could go, repeating the question

several times. I told Thomas that if he behaved properly over the next several weeks we would go to the Museum. But, I reminded Thomas that Alaska Day was not for another four weeks and that he needed to calm down. I never thought, in all my years in this state, that anyone could be so excited about Alaska Day.

6. As the weeks went by, Thomas kept asking about going to see Muktuk. I had to tell Thomas to be patient and that the day would be here soon enough. I was so relieved when Alaska Day finally arrived. Thomas barely slept the night before, and I had spent a long evening at the restaurant. After Wake Up with Muktuk! was over, I dressed Thomas in nice clothes in case it would be possible to take a picture with Muktuk. I was able to calm Thomas down enough to get a good lunch into him before we left for the Museum. Thomas talked about Muktuk the entire twenty minutes it took to get to the Museum.

7. We arrived at the Museum at about 1:30 p.m. It was rather crowded. I only like crowds when they are in my restaurant. I had purchased my ticket online, so all I had to do was show the print-out to get in. I knew Thomas would not be able to sit still for the remaining half hour before the show. So, he and I walked around and looked at some of the displays on the wall.

8. At one point, a reporter named Lee James came over to talk to me and Thomas. I explained to the reporter that I had been a long-time supporter of the Alaska Children's Museum and its mission of cultural and scientific education. And, of course, the reason we were there that day was that my son was a big fan of the character Muktuk and had been looking forward to this appearance ever since I showed him the newsletter. Without being first asked a question, Thomas asked the reporter if s/he had met Muktuk before and yelled out "Muktuk is great!" I apologized to the reporter for Thomas's outburst.

9. Before too long it was time for the performance to start. The way Muktuk stumbled onto the stage upon being announced, I knew immediately that whoever was in that suit was drunk. I have seen that stumble far too many times in my own father. The way that actor kept slurring words and otherwise speaking incoherently only confirmed it. You could tell that he or she was trying to keep in character, but just did not have the capacity to do so.

10. I was standing to the side of the seating area, so I could see the expressions on the children's faces as they saw their idol fall from grace. They were horrified! I don't blame them; I was too. It was not too long before some of the children even started to cry. My own Thomas, after about ten minutes, got up and ran to me for comfort. I was so angry at that actor for doing this to Thomas. And, I was not alone. Many of the parents started whispering to each other that Muktuk looked to be drunk. I nodded in agreement.

11. Mercifully, the performance did not last much longer. I could not believe that parents were letting their children get in line to hug Muktuk after what had happened. Not all parents, but even the few who did were too many. I never would have let Thomas near Muktuk when the actor was so obviously drunk. Thomas was too distraught to want to greet Muktuk anyway. I knelt down and tried to comfort Thomas as best I could. I told Thomas that what he sees on television is not always the truth and that as he grows up he will have to learn to live with disappointments. Thomas asked me what happened to Muktuk. I did not have an answer. That actor had shattered Thomas's innocence.

12. Enraged, I approached Muktuk. I told that actor, “You should be ashamed of yourself! I am never going to let my son watch your show again, and I hope the other parents here do the same.” Muktuk turned in my general direction and replied, “I’m sorry, I’m really just not feeling that well.” It was only at that point that I realized Muktuk was played by a wo/man, as the actor used her/his own voice. But I could also tell by that voice that the person inside the suit was definitely drunk. I have been around drunk people, and I have been around sick people, and the two do not talk the same.

13. I went back to get Thomas, who asked if we could leave. “Sure,” I told him, “we can go home and forget all about Muktuk.” I was in no mood to talk when that reporter approached me again. But, I wanted the world to know what a horrible, shameful thing Muktuk had done. I asked the reporter why, if this was supposed to be a happy occasion, then why was my child crying. I told the reporter that I was never going to let Thomas watch Wake Up with Muktuk! again. Muktuk is a bad role model, and I do not want Thomas exposed to an alcoholic. The reporter thanked me for my comments and then moved on to someone else.

14. Just as Thomas and I were about to head out, the director of the Museum made an announcement that s/he would refund the ticket price to anyone who wanted it. I told Thomas to wait by the door and got in line for a refund. When I got to the front of the line, I asked the director to give me back not only the ticket price for my day but also my yearly membership fee. It told him/her that I could not longer support the Museum because of letting someone like Muktuk perform drunk and ruin the day for so many children. The director briefly protested that it was not the Museum’s fault and begged me to give the Museum another chance. I thought about it, but decided I need to make a principled stand. I handed over my membership card and asked for my money back. The director sighed and gave it to me.

15. It is unfortunate that the actor playing Muktuk chose to let alcohol ruin her/his life. But this is the choice s/he made, and I cannot allow Thomas to be exposed to it. There are other children’s shows for Thomas to watch, and I will not let anything compromise Thomas’s moral upbringing.

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS**

ALASKA CHILDREN'S	)	
MUSEUM CORP.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
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v.	)	Case No. 5AK-08-99999 CI
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HAPPY BEAR STUDIOS, INC.,	)	
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Defendant/Counter-Plaintiff.	)	
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**Affidavit of Robin Davies**

1. My name is Robin Davies. I am 37 years old and have lived in Alaska all of my life, except for four years in college at the University of Washington. I majored there in education and obtained a teaching certificate upon my return to Alaska. I grew up in Moose Valley, Alaska – my mother taught in the chemistry department at the university there. I thought about staying in town when I was picking a college, but Moose Valley was kind of small, and I wanted to explore the world. Ok, Seattle isn't exactly New York or Paris, but for a kid from Moose Valley it was quite a change.
  
2. When I got back to Alaska, I was able to get a job teaching first and second graders at Egan Elementary School. I was 26 at the time. Got married, had a son, Jacob, and then a couple years later unfortunately got divorced. My ex and I are able to coordinate caring for Jacob, and he stays with me every other week.
  
3. About five years ago, I created this fictional character named Percy the Bear to tell Jacob bedtime stories on the weeks I had him. I spoke in this sort of high-pitched cartoonish voice and made up kids stories as I went along. Jacob really liked Percy. He was about three or four at the time. And every night it seemed like he would ask for a new Percy the Bear story. Sometimes, I repeated old stories. But, you'd be surprised at how good the memories are even of kids that age. After a little bit, I was getting pretty good at telling Percy the Bear stories.
  
4. The kinds of stories I would tell drew upon my love of Alaska and interest in the myths told by many Alaska Native cultures. That is one of the reasons why I made Percy a grizzly bear instead of a human or a dinosaur or whatever – so that Percy could interact with the other characters in the stories I would tell. After Jacob went to sleep, I would look through some of my mythology books to try to come up with a story for the next night.
  
5. I was at this dinner party in early 2005 with a friend of mine at the time, Dale Overstreet, who happened to work in the production company at a local television station. I was telling Dale about the whole Percy the Bear character I had made up and how much Jacob liked my stories. Dale became really fascinated with the character and suggested, I think partially jokingly, that I

should create a kids show around Percy. After thinking about it for a few weeks, I told him that I wanted to do it, and made a Percy the Bear costume.

6. I was overjoyed about this opportunity. I wanted to retain creative control over the character, so I formed my own production company – Happy Bear Studios – to handle all the representation for my creation. At the same time, I realized that I didn't know all that much about television production, and that I would need help from Dale, who was much more knowledgeable about these matters. I remained as president of Happy Bear Studios, but I hired Dale as the manager of the company, someone who could handle the weekly responsibilities of the television production. This was more or less a half-time job at that point. I gave Dale a two-year contract to serve as manager and promised to pay him/her half of whatever fees and royalties we made.

7. One of the things that Dale insisted on as a condition of taking the job was changing Percy's name. Dale didn't think that Percy was a very marketable name. I disagreed, but at the time I was willing to accede to Dale's judgment on this matter. I think even at that time, Dale had visions of taking the character national and wanted a name that would reflect Alaska. Dale chose the name "Muktuk". I thought this was a stupid name. Grizzly bears don't eat muktuk! And who wants to name a children's character after something so gross. But then, Dale suggested that the show be called "Wake Up with Muktuk!" I had to admit that that sort of had a ring to it. So, I agreed to change the name of my beloved Percy. Jacob didn't like this much, since it was Percy that had been telling him all those bedtime stories. But, there are certain sacrifices that have to be made in the entertainment world.

8. I was nervous for my first show, but the kids in the audience, including Jacob, really enjoyed it. I told the kids a couple of stories about my friend the Raven, and encouraged them to follow their hearts and be kind to others. This has been the formula I have used for all of my shows. With all the editing and so on, the first episode of Wake Up with Muktuk! didn't air for another couple of weeks. But when it did, wow was it well received! I was so excited! The local media was very receptive to an Alaska-themed children's program, and soon the show was being broadcast around the state. I continued teaching until the end of the 2006 school year, but decided not to re-up for the following year so that I could focus on the show. We were getting enough advertisers that I was able to make a living playing the role of Muktuk. I wasn't rich by any means, but I was happy. Well, at least professionally happy. I still missed my ex-wife/husband, Hayden, and even tried to get back together with her/him – for Jacob's sake if nothing else. But, Hayden didn't want this, so I had to move on.

9. Yes, Hayden once got a protective order against me. I got drunk one night, stupidly went over to Hayden's house, and made a mistake. I asked Hayden if we could start seeing each other again, and when s/he said no I grabbed a vase on a table near the door and threw it against the wall. I deeply regret this incident. I should have apologized to Hayden the next day, but for whatever reason did not. When I was served with the protective order, I called Hayden up and begged her/him to drop it because otherwise it would make it difficult for us to keep exchanging Jacob freely. I swore I would never come over drunk again, and I haven't. Hayden believed me and dropped the protective order.

10. Quitting my teaching job gave me a lot more flexibility in filming Wake Up with Muktuk! One of the things I decided to do was take the production around to other cities and towns outside Alaskopolis. I figured this was a great way to introduce children to all the diversity this state has to offer. I filmed shows in Bearpaw and Moose Valley, and even smaller places like New Shavlik and Crisscross Pass. Everywhere I went, Muktuk was warmly received by children and parents alike. This was very rewarding for me. Sure, it was a bit of a hassle to take the set down and put it back up, and to film on location, but it was worth it. Dale hated going to these small remote locations and kept saying that the show would be just as popular if we stayed in Alaskopolis the whole time. But this missed the point of the show, which was to make kids everywhere in Alaska feel good about themselves and to learn about the rest of the state.

11. I have to admit that toward the beginning of 2007, as the production values of the show increased and I was being asked to make more and more personal appearances, I began to feel overwhelmed. It was mostly me and Dale doing everything. I decided to shake things up a bit by hiring another on-air talent who could also do some of the writing and so on for the show. I had a friend from my teaching days, Reese Mercer, who was looking to get out of teaching. I knew that Reese was great with kids and would be the perfect person to help out with the show. The only trick was finding a new character that Reese could play.

12. Ultimately, I decided that Reese should play the role of Clyde the Moose, a new character I had come up with for the show. I made a similar moose costume for Reese as what I had made for Percy. Reese has turned out to be a real great addition to the Wake Up with Muktuk! team. I've found that having another adult on the show and involved in the conversation really opens up the possibilities for dialogue and story development. Plus, Reese has been a great personal friend and has helped me through some tough times. I mean, if a grizzly bear and a moose can be friends, isn't that the right kind of message to be sending to kids?

13. Unfortunately, Dale and I were not able to stay friends. Dale didn't like the addition of Reese to the team. Dale's two year contract was expiring toward the end of 2007, and s/he could tell that I'd be giving Reese more of a cut of the profits and giving Dale less. In fact, I think I might even have told Dale this. Dale was also unhappy with the direction of the show. As we were on the verge of national syndication, Dale wanted to do a lot more merchandising that I was comfortable with. I was afraid that the big corporate toymakers would take over the show and the character and I would lose control over the message. For me, Muktuk was never about money, but rather more about sharing happiness and a love for learning with children. Dale lost sight of this guiding principle.

14. When Dale's contract expired in the first week of December 2007, I decided not to renew it. I appreciated everything Dale had done for me and for the show, but after a couple of years I felt confident that I knew enough about the business to handle it and Happy Bear Studios myself. It was time to move on. I had grown tired of Dale's constant griping about where we were filming and what we should do for marketing and so on. This was my creation, however, and I needed to seize back control over it. Dale wasn't too pleased with this because s/he could see that Muktuk was about to break it big nationally. So, it was not an amicable parting. I brought Reese into the partnership sort of to take Dale's place, at least as far as the daily management of the company was concerned. Reese had been an accountant before becoming a teacher, so s/he was good at this. I gave Reese one-third of the profits of the business. That seemed fair to me.

15. In January of 2008, Happy Bear Studios struck a deal with a national syndicator to show *Wake Up with Muktuk!* to stations nationwide. I have to admit that I was unprepared for the popularity this would bring for the Muktuk character. Within weeks I was getting calls from television stations all around the country giving me feedback about how much parents liked my show. I always knew that kids would respond to a positive message about friendship and respect for one's surroundings. It was so rewarding to see this actually come true.

16. By the summer of 2008, I was travelling to the Lower 48 to make appearances as Muktuk. I tried to schedule these for my off weeks with Jacob. Still, it cut into my time not only with him, but also into my filming schedule. Sometimes, I would send Reese in my place. I had made some modifications to the Muktuk costume so that it would also fit Reese. And, Reese could do the voice fairly well. I mean, these are little kids we are dealing with, so they cared more about the image than the voice. Plus, the talking could usually be kept to a minimum. Sometimes, all I would do would be to sign autographs. I had a specially made rubber implant in Muktuk's right paw that had a "signature" on it and a picture of Muktuk. With a little effort, I could press the paw onto an ink pad and then give "pawprints" as autographs. I figured this was a good way for the kids to remember their experience. And, they usually bought a Muktuk book for me to autograph, so I didn't mind that little extra money.

17. I should say that I do try to make all appearances personally. First of all, I enjoy meeting all of my fans. It is one of the things that makes my job so rewarding. Moreover, I feel an obligation that since *I* am Muktuk, *I* should be the one appearing in public in costume. Don't get me wrong, I fully trust Reese to maintain the integrity of the character and to pull off public appearances without a hitch. It is just that I created the character, and it wouldn't feel entirely right knowing that someone else was out there performing as Muktuk. I only send Reese out as Muktuk when I am too tired or too busy to make the appearance myself. I've also had Reese substitute for me a couple of times when the public appearance would conflict with my time with Jacob. As important as Muktuk is to me, my son is even more important.

18. I remember in mid-July being approached by Gerry Constantine about appearing at the Alaska Children's Museum for a kick-off celebration for their celebration of the 50th anniversary of Alaska statehood. I've long been a supporter, and member, of the Alaska Children's Museum. They do a great job over there of getting kids interested in Alaska history and culture, as well as having a few interesting science exhibits. I am also a firm believer that children should learn about Alaska's path to statehood. These children are our leaders of the future, and they can only take Alaska forward if they know how we've gotten to where we are now. Fortunately, the celebration, which was taking place on Alaska Day, happened to be on a weekend I was planning on being in Alaskopolis. I wasn't going to have Jacob that weekend, so I was happy to agree to make an appearance at the Museum.

19. Gerry wanted me to donate my appearance fee for the Alaska Day celebration. When I make appearances outside Alaska, I am usually paid \$3,000 plus travel expenses. I typically give Alaska bookings a break and only charge \$2,000. I didn't think it was fair to me to appear at the Children's Museum for free, because then every local Alaskopolis charity would be expecting a free appearance from me. But like I said, I do support the mission of the Alaska Children's Museum. Consequently, I reduced my appearance fee even more – down to \$1,000 – and threw in the recording of a couple of promos as well.

20. I don't remember too much about the drafting of the appearance contract. Gerry and I talked first over the phone and then over lunch to fill in a few more of the details. Gerry said s/he had a sample artist's appearance contract that s/he could adapt for my appearance. Then on August 7, Gerry stopped by the studios in the afternoon to have me sign the contract. I looked over it, and it seemed fine to me. So, I signed it. I didn't really read it too carefully. It looked like a form contract I had seen plenty of times before. I didn't think at the time that it would cause all the trouble it has.

21. About a week before the October 18 Kick-Off Celebration, I did a little bit of research on Alaska Day. I always assumed it was the day Congress voted to make Alaska a state. But I was wrong. Actually, it is the day that the territory of Alaska was handed over from the Russians to the United States. This took place at Fort Sitka on October 18, 1867. Alaska had been sold to the Russians back in March of that year, but it took a while for the actual handover to take place. March 30, by the way, is Seward's Day, though traditionally it is celebrated on the last Monday in March. That is the day the treaty was signed recognizing the purchase of Alaska. I drew up a few notecards that I could recite at the event, recounting these facts and talking about how interesting Alaska history is, and practiced with them a couple of times.

22. Unfortunately, as the week wore on I started to develop a bad flu. I knew I should have gotten my flu shot, but I was so busy I never got around to it. I became very groggy by Friday the 17th. I thought about not coming into work, but I decided I would feel no better staying at home, so I may as well go in. We film on Wednesdays, in case I have to travel for personal appearances on the weekends, so that wasn't really an issue. Mostly, I was working with Reese on scripts for shows for the next couple of weeks. Toward the end of the day, I asked Reese if s/he was available to come to the Alaska Children's Museum the next day to fill in for me if I was too sick to continue. S/He said s/he was. I told Reese that I would try to make it through the performance, and would keep the suit myself, but that s/he should show up at 1:30 or so to check in with me. I copied my notes for Reese so that s/he could prepare just in case.

23. After work, I decided to go out for a light dinner. I still wasn't feeling well, but I was hungry and had to eat. I went to Wendell's, which is my favorite steak restaurant. I was surprised to see Dale at the bar area of Wendell's. I normally try to avoid Dale these days, but s/he approached me and offered to buy me an after dinner martini. Told me it was in appreciation for doing the Alaska Children's Museum gig the next day. I knew I shouldn't be having a drink, what with my flu and all, but I figured that one drink would be fine, especially since it was free. Dale didn't stick around too long after buying me the drink. We still don't have much to talk about. That one drink was all I had. I was able to get home at a reasonable hour and get a good night's sleep.

24. The next day, I woke up feeling worse than I did on Friday. In retrospect, maybe I shouldn't have had that drink. I slept late, maybe 'til 10:00 or 11:00. I still had plenty of time to grab a bite to eat, get my costume together, and head over to the Alaska Children's Museum. I wasn't feeling well physically, but the thought of seeing all those happy faces on all the children when Percy walked into the room really cheered me up. Appearances like these are one of the better aspects of my job.

25. When I got to the Museum, almost immediately Gerry Constantine took a confrontational attitude toward me. Right after I walked through the back door, like I was told to do, Gerry comes up to me and starts yelling, “What is wrong with you? I can’t believe you are doing this to me!” I asked her/him what s/he meant, and s/he replied, “I can’t let you go out there like this!” I assured Gerry that I was fine and could do my appearance. I told Gerry that I was a little sick, but that I hadn’t been drinking. This didn’t seem to calm Gerry down any. Gerry just kept getting madder and madder and more and more demonstrative.

26. Finally, I offered to Gerry, if s/he didn’t want me to perform, to have Reese take my place. Reese had shown up in the middle of all of this, just like I had asked him/her to. I asked Reese if s/he was ready to go, and s/he said s/he was. But Gerry would have nothing of this. Gerry said exasperatedly, “I paid for Muktuk, and I’m going to get Muktuk! Now, Robin, dammit, go on out there and do your job. If you want to make a fool of yourself, see if I care. See if those children, who waited in line for an hour to see their hero, think of you as anything but a bum when this afternoon is through!” I told Reese to stick around and try to sell some Muktuk children’s books and dolls after the show. Reese often does this, and s/he was already there at the Museum, so why not.

27. Despite not feeling well, I went out and performed as Muktuk as best I could. Sure, I flubbed a few lines. I mean, I was reciting from memory, and only was operating at about half-capacity at that time. But I thought I did alright. And, the kids seemed to enjoy it as well. Even when I’m not at my best, children always enjoy seeing Muktuk.

28. As I had agreed to do, I stayed around a little bit after my presentation to give out pawprints. I guess there must have been something else going on in the Museum, because not as many parents and kids came up to me as usual afterwards. No matter. I still enthusiastically welcomed the kids that did want to see me. Then this one parent, I don’t know who s/he was, tried to pick a fight with me, said I should be ashamed of myself. I thought that was a little harsh. Like I said, I admit I was not at my best, but I was still able to teach the children about the importance of Alaska Day. I didn’t say anything back to this parent. In my line of business, you have to learn to ignore the occasional jealous parent or other wacko.

29. After only about ten or so minutes of giving out hugs and pawprints, Gerry Constantine grabbed my arm and pulled me out of large room where the gathering had taken place and into the back. I don’t know what Gerry’s problem was; everything was going fine. Gerry told me to leave immediately and not to expect to be paid for this “debacle.” I protested that the kids wanted more Muktuk, but Gerry insisted again that I leave. No point in staying around where I’m not wanted. To this day, I still haven’t been paid my thousand dollars by the Alaska Children’s Museum. I was also ushered out so quickly, that I don’t think Reese was able to make very many book or doll sales.

30. As bad as I felt about what happened at the Children’s Museum that day, what really hurt me was seeing the article in the Alaskopolis News and Observer the next day saying that I was drunk at the Alaska Day Kick-Off Celebration. This absolutely was not true! And to have it in print for all the world to see! I am more than willing to accept responsibility for my mistakes and to accept the consequences. But I cannot accept being lied about in this way! I just can’t have parents reading about how Muktuk is a drunk. Muktuk is a hero to so many kids and to

parents who want their children to get up on Saturday mornings and watch wholesome shows that teach love and understanding. Not meaningless cartoons with no underlying moral of any importance. But if they think Muktuk is played by a drunk, this whole persona goes away. I am not a drunk. I have worked too hard to build up the character of Muktuk in the eyes of the public to let it be torn down so quickly and carelessly.

31. It wasn't until a couple days later that I heard that Dale was behind all of this. I called up the reporter who wrote the article, Lee James, to give him/her a piece of my mind. Lee said that s/he was only reporting what happened and what s/he was told. I asked Lee why s/he came to the Kick-Off Celebration anyway, and Lee told me that Dale Overstreet had given him/her a call. Dale apparently suggested that Lee come to the Museum that day because the event was "sure to be newsworthy." That clinched it for me. After our acrimonious parting, I knew Dale would try to get me back one day. Dale is not only a whiner, but can be a vengeful person as well. I think Dale was trying to set me up by buying me that drink the night before. I bet Dale also called that police cop to come to Wendell's. I almost forgot. That's right, this police officer shows up at Wendell's after I'm finishing my drink and asks me to leave the restaurant, says I've been drinking too much. I was a little groggy because of my flu, but I certainly wasn't drunk. But, I didn't want to cause a disturbance, so I left peacefully. I am so mad at Dale for trying to get me arrested and then trying to ruin my career, but that just shows what kind of person Dale is.

32. Since the newspaper article appeared, I've seen a decline in Muktuk merchandising sales. Not surprisingly, the article was picked up by a few other newspapers nationally and had wide circulation over the Internet. It was mentioned in a few of those gossip programs, became the subject of jokes on the late night comedy shows, and I even had to make an appearance on the Today Show to defend my reputation against these lies. A few television stations dropped my show for a couple months, but most of them have picked it back up by now. Where I have seen the sharpest decline is in requests for personal appearances. I used to do two or three a month, but since the article came out I have only done one nationally and one locally, both of which were booked before the Museum incident. No new bookings have come in. You'll have to ask Reese what kind of hit I've taken financially. Reese keeps most of the books on that.

33. I love Percy the Bear. I love being able to share Percy with the rest of the world through the Wake Up with Muktuk! show. I hate seeing that taken away by false accusations of a flaw I simply do not have. I miss being able to make personal appearances and meet kids and share the love and joy that is Percy. Jacob is getting older and doesn't want me to tell him bedtime stories as much anymore. Muktuk keeps me feeling young and vibrant. I just want things to go back to the way they were before I made that appearance at the Alaska Children's Museum.

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS**

ALASKA CHILDREN'S	)	
MUSEUM CORP.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Case No. 5AK-08-99999 CI
	)	
HAPPY BEAR STUDIOS, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
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**Affidavit of Reese Mercer**

1. Hi, I'm Reese Mercer. I'm 41 years old. I am married with a ten-year-old daughter. I play Clyde the Moose on the hit children's show Wake Up with Muktuk! I've been doing this since March 2007. Before that I was an elementary school teacher for nine years. That was where I met Robin Davies. Before being a teacher, I was an accountant for about six years. I did a variety of odd jobs before that, went to school, the usual stuff for twenty-somethings. I grew up here in Alaskopolis, and went to college here at Alaska State University, so I've been in Alaskopolis all of my life.
  
2. I guess I first met Robin Davies in 1999. We were both relatively new teachers at the time and taught at the same elementary school. I taught third and fourth grade, and Robin taught first and second grade. I'm a few years older than Robin, but we got along great and even occasionally got together outside of work. I had just started my family, Robin was recently married and would have Jacob before too long. Things were great. It was nice as a new teacher having a good friend to share stories about the classroom with. I can't say I ever witnessed Robin in the classroom, but s/he always struck me as someone who was great with kids and would be a great teacher.
  
3. After three years together at Egan Elementary, I got transferred to Nordale Elementary across town. I was kind of sad to leave Robin and my other friends at Egan, but Nordale was a newer school and closer to my home, so ultimately I decided it was the best move for me. Not surprisingly, Robin and I didn't have as much regular contact after I changed schools. We still emailed every so often, and would run into each other at school district meetings, but we didn't hanging out after work like we used to.
  
4. However, I do remember Robin calling me in April 2003 when s/he and Hayden decided to get divorced. I felt really bad for Jacob who was only two and a half at the time. Robin was pretty torn up about getting divorced. I think Robin still really loved Hayden, but with all the stresses of having a young child ... or maybe it was something else, I don't really know ... Hayden decided s/he just didn't want to be with Robin any more. Robin told me that s/he was shocked by how quickly Hayden decided to up and leave. Robin kept the house they had bought

together – paid Hayden for his/her share of the equity that had built up. I don't think it was all that contentious a divorce, as these things go. Other than the house, there was not much property to divide. And fortunately, through a court-assisted mediation program they were able to work out a custody sharing arrangement for Jacob that both of them could live with. I tried to help Robin through things as best I could, but, I mean, there was not much I could say.

5. This wasn't until more recently, when we started working together again on the show, but Robin explained to me what happened that led to Hayden getting a protective order against him/her. Turns out in 2006, after *Wake Up with Muktuk!* was starting to get popular locally, Hayden started thinking that Robin should be paying more in child support. The show wasn't really making any money yet, but I guess, you know, you get on TV and everyone thinks you are rich. I know Robin. S/He is a very honest person. S/He is also devoted to Jacob. I mean, how many parents would make up a new bedtime story every night just to keep their kid happy? If Robin was making more money and could give Hayden more in child support, I have no doubt s/he would. In fact, now that the show has been making lots more money these past two years, Robin has voluntarily increased the amount of money s/he gives to Hayden each month. I think the two have a pretty good informal understanding. They never went to the courts to enforce child support, but have always worked it out between themselves.

6. Anyway, Robin told me that s/he and Hayden got into a big argument one evening, while they were exchanging Jacob, about how much money Robin was making. Robin admitted to me that s/he'd been drinking a bit too much that day, and I guess Robin picked up a glass vase and threw it against the wall, shattering it to pieces. The next day, Hayden went to court and filed for a temporary protective order without telling Robin what s/he was doing. S/He got the temporary protective order that day. As these things usually go, I guess, Robin wasn't at the hearing for the temporary protective order. Robin said s/he felt really betrayed when s/he was served with the protective order because all this was a simple misunderstanding over money that could be easily resolved. Robin told me s/he called up Hayden immediately, apologized for what had happened, and swore it would never happen again. I guess this worked, because Hayden filed a couple of days later to dissolve the protective order. I knew Hayden from back when Robin and I were both at Egan and my husband/wife and I would go over to Robin and Hayden's place for dinner or they would come over to ours. Hayden did have a tendency to overreact to minor things, so I completely believe it when Robin tells me this is what happened with the protective order. Robin and Hayden seem to be on pretty good terms these days. Hayden drops by the studio frequently to drop Jacob off or pick him up. I wouldn't say that Hayden and Robin joke around with each other, but they are at least friendly. To be honest, I'm not sure what Robin ever saw in Hayden. I hear that the attorneys for the Alaska Children's Museum wanted Hayden to testify at this trial about Robin's drinking, but Hayden didn't want to, and I guess they weren't sure what s/he'd say so they didn't subpoena him/her.

7. Yeah, Robin does still drink from time to time, but s/he's always responsible about it. I mean, I don't think I've ever seen Robin drunk around kids. Robin never shows up at work drunk. If we aren't filming or don't have any other reason to have kids in the studio, occasionally Robin will have a beer or two during the day. But nothing to excess. The only times I've ever really seen Robin drunk is when we go out on the town after work or maybe if we are travelling somewhere out of state for an appearance. And, I mean, we work hard, so I can understand Robin wanting to unwind a bit. I sometimes have a drink myself. I guess Robin does

sometimes have a bit of a problem controlling her/his drinking, but like I said, it has never been a problem professionally.

8. Robin first called me up to come to work on Wake Up with Muktuk! back in February 2007. Like I was saying, I'd hear from Robin occasionally, and then there was Robin's divorce, when we talked a bit more again, but getting a call to come work on the show was a huge surprise. I mean, I'd of course followed Robin's career and the growing success of his/her show. And I always liked Robin, we got along well. I just never had any reason to believe I'd be asked to come be a part of Wake Up with Muktuk! I was thrilled to do it!

9. Robin told me that I could sort of gradually ease my way into the show while I was finishing out the school year. I didn't want to leave my kids in the lurch with only a couple of months to go, so I'm glad Robin gave me this flexibility. Robin told me that s/he was looking for a new creative force to help with the writing of the show and maybe play a new character. I'm kind of known in the school district for having my students put on lots of short plays as a means of participatory learning. I even had them do a very simplified mock trial once. Third and fourth graders absolutely love play acting, and having them do these plays is a great way to introduce them to great literature. So, Robin must have remembered this about me and figured I'd be a natural to join the show.

10. Robin and I developed the character of Clyde the Moose together. Robin felt that the Muktuk character was starting to become a bit stale having only the children to interact with. Adding another character would give Muktuk an "adult" to bounce dialogue off of. Plus, I would be able to be a part of the script, which needless to say you couldn't really do with young kids. Over the next few months, as Clyde started becoming a more integral part of the show, Wake Up with Muktuk! developed from a strict storytime show to one with more fleshed out conversations surrounding the stories. I don't want to make too much of this. After all, it was still a television show aimed at relatively young children. But I do think that the Clyde the Moose character added a great deal to the show and helped with the national roll-out.

11. Over time, Robin also developed a couple more roles for me at Happy Bear Studios. One thing Robin was hoping I could do, and I was happy to oblige, was take over playing Muktuk at some personal appearances. Robin is very protective of her/his time with Jacob, and the increasing popularity of the show led to more and more requests for personal appearances by Muktuk, including in places outside Alaska. Before too long, these requests were starting to infringe upon Robin's time with Jacob. I have my own child, so I can certainly understand this. But, I'm still married and don't have to worry about as much about sharing time with my daughter. So, if had to make one short weekend trip a month to earn a little extra money, I could live with that. Robin let me keep two-thirds of any appearance fees when I played Muktuk.

12. It didn't take me too long to learn to do Muktuk's voice. It is one of those high-pitched cartoony kind of voices. Robin taught me how to do it. And, Robin also made some modifications to the Muktuk suit so that it would fit both of us. Mostly, this involved building in adjustments so that the arms and legs could be lengthened or shortened as necessary. The suit is a really cool design. It has all this puppetry in the head. You see out of this patch in the neck that is covered with a bronze metal mesh, just below the head. It can be hard to see in the suit,

and it is also easy to overheat. But, you get used to it after a while. Robin built the Clyde the Moose suit so that it has many of the same features.

13. The other task that I came to perform was keeping the accounting books for Happy Bear Studios. I don't think Robin hired me because of my accounting background, but it sure came in handy after Robin and Dale had a falling out. Right from the minute I started working on Wake Up with Muktuk! there was a palpable tension between Robin and Dale. Both of them have pretty strong personalities at times, and you could tell that both wanted to be in control. I have a much more laid back personality, so Robin's forceful personality doesn't really bother me. I mean, Muktuk is Robin's character anyway, and this is his/her show, so of course I am going to defer to Robin. But Dale just couldn't bring herself/himself to do this. I think Dale is a pretty good producer, but s/he started taking professional disagreements with Robin too personally.

14. I think Dale was jealous of Robin. The main disagreement between Dale and Robin seemed to be over the growth of the show as it started to expand nationally. Dale wanted most of the credit for this and a bigger share of the syndication dollars. I do have to give Dale credit for making most of the contacts that led to the deals with other television stations around the country, but this doesn't make up for the fact that Muktuk, i.e. Robin, was still the focus of the show and the key to all that success. You see, Dale could never accept just being an employee of Happy Bear Studios, even one who got half of all the profits. I think Dale saw Muktuk as this great children's character that anyone could play and that could become a big national success, bringing Dale all this wealth and adulation. Dale knew her/his contract was up at the end of 2007 and could see all of this potential payoff coming to an end just as it was getting started.

15. Dale even came to me once, toward the end of 2007 when it was clear her/his contract was not going to be renewed, and asked me if I wanted to play the part of Muktuk on the nationally syndicated show. Dale told me s/he didn't trust Robin to handle all of the national success and big money. I don't really know how Dale planned on wresting legal control of Muktuk away from Robin. I mean, Robin owned Happy Bear Studios and Happy Bear Studios owned the rights to Muktuk. More importantly, I was shocked and aghast that Dale would make such an offer to me. Robin is not only my boss but my friend; I could never betray him/her like that. I told Dale I would never consider such a thing. Dale told me I would regret my decision. Dale said that it was just a matter of time before Robin screwed everything up for me and everyone else, and that if s/he could play a part in making sure this happened s/he would.

16. Things went a lot more smoothly after Dale left. I think everyone at work was happier. Of course, we were also happy because Wake Up with Muktuk! was picked up by a national syndicator in April 2008. Robin's agent Julie Marvis arranged the syndication deal. We had kind of been doing our own syndication before that, but we were not really equipped for it, and it was getting to be a hassle sending recordings of the show to a handful of stations around the country. Having a national syndicator to do this made things much easier for us. It also meant more money, which enable us to improve our production values and give everyone at Happy Bear Studios a modest raise. The increase in product values resulted in building an elaborate new set, with new cameras and everything. This did mean that we couldn't do our on-location shows anymore, but I was fine with that. Shooting a children's show in remote locations in Alaska may have worked when there was a small crew, but we now had so many people working on the show that it just wasn't practical to pack everything and everyone up for a week. I know Robin was a

bit disappointed to give these on-location shows up, but s/he realized s/he had no choice. I think Robin also realized that the rest of the crew was relieved not to be doing the travelling too.

17. I don't know anything about the lead up to the Kick-Off Celebration at the Alaska Children's Museum. Robin handled all of those negotiations. I did see it on Robin's schedule. That Friday, October 17, I remember Robin coming into work not feeling all that well. Robin had seemed a bit ill on Thursday and left work an hour or so early. Robin said s/he had a bit of a flu and certainly looked it. I told Robin that maybe s/he should go home. But, Robin said s/he would push through the day and that s/he didn't think going home would make him/her feel that much better. I don't know. I usually feel better after taking a nap when I'm sick, but if Robin wanted to stay, that was his/her choice. As the day wore on, however, I could see Robin getting more and more tired and weary. I don't think Robin was very productive and probably just should have gone home to get some rest.

18. Before we both left for the day, Robin asked if I would be available to come to the Kick-Off Celebration on Saturday in case s/he was too sick to do the performance. I told Robin that I had no plans and would be happy to do it. I offered to Robin just to take over the appearance so that Robin wouldn't have to worry about it. I could tell Robin was thinking about it, but ultimately Robin said that s/he really cared about what the Alaska Children's Museum was doing and wanted to try to do the appearance if s/he at all could. So, we agreed that Robin would show up at the Museum with the Muktuk suit, and that I would stop by and take over if necessary. Robin gave me a copy of the notes s/he had made for the presentation and told me to review them that evening in case I had to do the presentation the next day. If Robin was fine to go forward with the appearance, I would just stay there and sell merchandise.

19. Like I said, I do plenty of personal appearances as Muktuk. In fact, I had flown down to Seattle the previous weekend to do one. The organizers of these events most of the time haven't met Robin, so it is no big deal when I show up instead. A couple of times the organizers will protest, but after I explain the situation and do the voice for them and all that, they usually calm down. I mean, the important thing is that Muktuk is there, which is really all the kids care about. I guess I can see why some people would expect Robin to actually perform, but all that Robin or his/her agent ever promises is that Muktuk will be at whatever event, not that s/he personally will be.

20. When I showed up on Saturday, October 18 at the Alaska Children's Museum, Robin was already there and was in a heated argument with Gerry Constantine, the manager of the Museum. Robin was still obviously feeling sick, but Gerry seemed to think that Robin was drunk. I've seen Robin drunk, and trust me, Robin wasn't drunk that day at the Museum. Yeah, Robin was a bit worn down, s/e was still coherent and everything.

21. Robin asked Gerry if s/he'd feel better if I played the role of Muktuk. I don't think this sat very well with Gerry. Since I had done the role many times before, I didn't see it as such a big deal, but Gerry said something about how only Robin could play Muktuk. I tried to calm Gerry down and said I had done the Muktuk character before and was totally comfortable doing this appearance. I even spoke a little bit in the Muktuk voice to try to show that it wouldn't be an issue. Gerry just wasn't buying it, though. I do wish that Gerry hadn't insisted that Robin go on

stage, as it was readily apparent that Robin was very ill and not up for the task. But, Gerry insisted, and Robin is such a good person that s/he caved to Gerry's demands.

22. I did go out in the crowd to watch Robin perform. I positioned myself at the merchandise table, which was at the back of the exhibit area, on the opposite end of the room from where Robin would be performing. One of the Museum assistants had been handling sales, and they seemed to be going pretty well. Mostly, parents were buying books so that their children would have something for Robin to sign afterwards.

23. Robin certainly did not give the best Muktuk performance s/he'd ever done. S/He stumbled over some of the sections of the performance s/he had prepared. Parts of the performance were as a result a bit incoherent. You could tell some of the children were confused by what was going on. Judging by the looks on their faces, several of the parents were also disappointed. I can't really say I blame them, which again is why I wish Gerry had let me do the appearance instead of Robin. But, it was too late for that now. On the whole, though, I don't think the appearance was a disaster, just not as polished or up to the high standards that Robin and I have maintained for other Muktuk appearances.

24. After the performance, Robin stuck around to give hugs and pawprints. This is always my favorite part of any Muktuk appearance because it allows you to interact with the children. At first, I just hung around at the merchandising table, but I could tell that several parents were unhappy with the subpar performance by Robin, so I circulated around the room to try to explain to as many parents as I could that Robin was not feeling well and that this was the reason for why the performance was a bit disjointed. Some of the parents told me they thought Robin was drunk, but I assured them this was not the case. Once I explained that Robin was very ill with a bad flu, but that s/he cared about kids so much that s/he didn't want to let them down by not showing up, most parents understood and forgave Robin. People understand that you can always try your best, but if you are sick you can't always do your best.

25. After about ten minutes, I saw Gerry dragging Robin out of the room. I don't know why; everything seemed to be going well to me. Kids were still lined up to greet Muktuk. I stuck around for another ten or fifteen minutes until Gerry came back into the room and offered to give refunds to anyone who was disappointed by Muktuk's appearance. I really didn't think that was necessary, but it was certainly Gerry's choice, not mine, so I wasn't going to argue any. I did, however, at that point decide that there was not much point in me staying at the Museum any longer. I packed up the unsold merchandise and left through the back entrance, which Gerry had left unlocked.

26. I didn't know that there had been a newspaper reporter at the Museum that day and was shocked when I saw Lee James' article. I figured it would get a lot of play in the national media, and sure enough it did. A story claiming that a popular children's entertainer showed up drunk in front of a group of kids is tailor-made for the tabloids. It really angered me because I know Lee – I used to babysit her/him – and s/he never even came up to me to ask about the truth of what was going on. Lee is a young reporter, and s/he'll learn, but this really could have been handled better. I mean, reading the article carefully, I guess Lee doesn't say that s/he thought Robin was drunk. I just would have hoped that Lee would have looked into the matter a little bit more closely before repeating Gerry's lies.

27. In the aftermath of the newspaper article, Happy Bear Studios suffered an immediate and sharp decline in the requests for personal appearances by Muktuk. And, five out of the seven places that had already scheduled personal appearances by Muktuk between then and Christmas, two in Alaska and three outside of the state, cancelled. All told, we definitely lost \$13,000 in personal appearance fees as a result of what Gerry said in that article. I'm sure there were other booking possibilities that we missed out on because no one called us, but these are impossible to document. It was only in late January that we started to get new requests for personal appearances, and some of those were for a couple months out. One other financial loss I can document, however, is the loss of television stations that subscribed to our show. Twelve stations stopped running Wake Up with Muktuk! within three weeks after the article on the Kick-Off Celebration. All but three of those picked us back up by the end of February 2009. The amount each station pays depends on its market share, but by my accounting, Happy Bear Studios lost \$34,000 in revenues from the syndication decline, even accounting for the fact that most of these stations returned to showing Wake Up with Muktuk! The resulting loss of revenues has cut into our operating budget dramatically.

28. I know Robin feels bad about giving a poor performance at the Alaska Children's Museum that day, but there is no way that s/he deserves what has happened. Robin cares so much about kids and being a positive role model. It is going to take a long time to overcome this. That is so unfair.

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS**

ALASKA CHILDREN'S	)	
MUSEUM CORP.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Case No. 5AK-08-99999 CI
	)	
HAPPY BEAR STUDIOS, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
<hr style="width:40%; margin-left:0;"/>		

**Affidavit of Lee James**

1. My name is Lee James. I am 26 years old and have been a reporter at the Alaskopolis News & Observer since March 2008. I graduated with honors from Harvard University in 2006, where I was a journalism major. I worked on the school newspaper there, and then did a one-year masters program in journalism at Boston University. This was followed by a stint in a local weekly newspaper in Boston for a little over a year before I got homesick and decide to return home to Alaskopolis. Fortunately, I have a good resumé and was able to get a job at the AN&O without too much trouble.
  
2. Because I am a relatively new reporter, I mostly cover smaller local stories, including a lot of stories on the local entertainment scene. Art openings, gardening shows, big fundraisers, things like that. Of course, my goal is to work my way up to the bigger stories in town and in the rest of the state. I would especially like to cover political stories, but I am not there yet. I will get there, I just have to be patient and do a good job on the assignments I have in the meantime.
  
3. Doing the local beat, I've covered a couple of stories on Robin Davies and Muktuk. Robin is quickly becoming the biggest celebrity in town, what with her/his show going national. Robin has always been very professional with me. I have a fondness for Wake Up with Muktuk! because I kind of know Reese Mercer, who plays Clyde the Moose. Reese used to babysit me, starting when I was a little baby. This continued even after Reese went to college, though less frequently. I don't keep in touch much with Reese and certainly did not use the connection to get any stories with Robin.
  
4. Most of the stories I have done on Wake Up with Muktuk! have focused on the process of national syndication as it has unfolded. It is always exciting to export Alaska culture nationally, and a children's show is a unique way to do it. Usually, Alaska shows are adventure shows of shows about the tough living conditions in Alaska. So, it is nice to have a change of pace with a show like Wake Up with Muktuk! that celebrates the rich cultural history of the state and of Alaska Natives. Robin deserves all of the local popularity the show has achieved.
  
5. Since I started working at the AO&N, I have done three articles on Wake Up with Muktuk!, not including the one at the Alaska Children's Museum. That probably does not sound

like too many, but three articles within a period of five months about a television show, even one produced locally, is really quite a bit of coverage. It just goes to show how much our readers are interested in seeing a local project succeed on a national stage.

6. For two of the articles, I interviewed Robin – once generally about the growing success of the show and then again about what changes a national syndication deal would mean for how the show would be produced. I was especially concerned, as were many others in Alaskopolis, that a national syndication deal might mean moving production of the show out of state. Robin assured me this would not happen. It was clear from my interviews with him/her how much Robin loves Alaska, and even more so how much Robin loves children. Robin told me that being able to spread joy and love and understanding to children nationally was more important than any money s/he earned from the show. I felt Robin was being genuine when s/he said this.

7. For the third article on the show, I interviewed local parents about the importance of Muktuk to their children. This article came out in late September, after the national syndication deal had gone into effect. All of the parents I interviewed had a very positive impression about Muktuk and the show in general. They all emphasized how much their children loved Muktuk and how excited they were every Saturday morning to watch a new episode. Several parents said their children really looked up to Muktuk. Even though Muktuk was a fictional character, parents commented on the positive values of appreciation for diversity that the show emphasized.

8. I got a call on Wednesday, October 15, 2008 from Dale Overstreet about the Kick-Off Celebration at the Alaska Children’s Museum. I had never done a story on the Alaska Children’s Museum before. I had heard of them, but had never actually been in the museum. It was a fairly low key museum and did not do all that much to generate press coverage. Dale described the fundraising campaign the museum was undertaking and how the campaign would be focused on the history of Alaska from its transfer from Russia up to its formal admission into the Union. That sounded like a worthwhile project for the museum and interesting, but still not something that demanded space in the newspaper. Then Dale told me that Muktuk would be at the Kick-Off Celebration on October 19 and that the event was “sure to be newsworthy.” I am not sure what Dale meant by saying that the event would be “newsworthy.” Dale had this sort of insistent tone in his/her voice when s/he said this. Still, I knew that the combination of the fundraising campaign with the personal appearance by Muktuk was a story I could convince my editor to publish. I told Dale I would be there and would write an article on the event.

9. I got to the Alaska Children’s Museum at about 1:30 on Saturday, October 19. When I told the attendant at the entrance I was with the Alaskopolis News & Observer, he let me in for free and directed me to Gerry Constantine, the director of the museum, who was busy arranging chairs for the parents to sit in. I went over to Gerry, introduced myself, and explained that I would be writing an article on the Kick-Off Celebration. Gerry was very excited to hear this and told me that this was exactly the kind of publicity s/he was hoping for. Gerry told me that the fundraising campaign was a big success so far in the sense that both membership and interest in the museum had increased since the start of the campaign. I could see by the number of families entering the museum that this was going to be a big event. Gerry further told me that it was her/his hope that the fundraising campaign would not only be a boost to the museum as it sought to expand into a larger building in the future, but that it would also be an excellent way to teach

children about Alaska history. I was not able to talk to Gerry for too long before s/he had to go meet Robin Davies.

10. Since the performance would not start for another half hour or so, I talked to a few parents about why they had come to the museum. There were probably fifty or so families in attendance by the time the event started. I think I probably talked to five parents in the half hour I had. Two in particular stand out in my memory. The first was Devon Goldman. Devon said that s/he had joined the museum only a week earlier after hearing about the Kick-Off Celebration in a radio commercial. Devon had brought his/her six-year old daughter, Rachel, whom Devon said was a huge fan of Wake Up with Muktuk! Devon told me that when Rachel heard that Muktuk would be at the Alaska Children's Museum, she begged to go. Devon said she knew she had no choice but to make plans to come that day. Devon looked up the museum on the web and after reading about it decided it was a worthwhile organization that was deserving of his/her financial support. Devon expressed to me how all week Rachel had been talking about Muktuk and that she could not wait until Saturday. I asked Rachel if she was excited that she was about to see Muktuk, and she just smiled and started laughing.

11. I then talked to Asa Harmadi, who had brought her/his five-year-old son Thomas to the museum. Asa had been a member of the museum for over a year and a half and was very supportive of the work it had done to educate children on science and Alaska history and culture. Asa also said that her/his son was a big fan of Muktuk and had been looking forward to Alaska Day ever since Asa read about the appearance in a museum newsletter a month prior and told Thomas about it. Thomas then piped up and asked me if I had met Muktuk yet. "Muktuk is great!" Thomas yelled.

12. It was not too long after this that Gerry came back into the performance area to ask the crowd if they were ready for some Muktuk. All the children cheered. Then Muktuk came out. I had never seen Muktuk perform in person before; I had only seen a couple of episodes of Wake Up with Muktuk! In the shows, Robin always gave a very lively performance as Muktuk. Here, s/he came across as very lethargic. It really was not what I was expecting. Muktuk slurred several sentences and spoke incoherently at times. In a couple of places, Robin seemed to break out of the Muktuk voice for a split second and revert back to her/his normal speaking voice. But then Robin would realize what was happening and instantly shift back into character. Or, at least sort of into character. Like I said, this was not the Muktuk from the show.

13. It is not my job as reporter to make an evaluation of what was wrong with Robin. That is why I kept my article neutral. However, speaking not as a reporter but rather as an eyewitness, it appeared to me that Robin was very ill. Robin was stumbling around the stage area. S/He got a few of the facts about Alaska Day wrong, saying for example that William Seward was the Vice President, when everyone knows that Seward was the Secretary of State. At the same time, Robin did genuinely seem to be trying to do a good job. I do not think it would be possible for Robin to give the type of performance s/he did if s/he was actually drunk, as Gerry Constantine would later claim. I think someone who was drunk would not be able to maintain the high-pitched Muktuk voice as consistently as Robin was able to do that day. Plus, the attitude that Robin expressed throughout the performance came across as sincere, if a bit disorganized and disjointed. A drunk person almost certainly would have been flippant and negative. Robin was

trying her/his best to maintain a positive attitude, but just could not give a performance up to the high standards of the weekly show.

14. I was standing toward the back, so I could not see many of the faces of the children as this was going on. However, as I looked around at the faces of the parents standing near me, I could see that many of them were displeased with Robin's performance. The whole performance probably only lasted ten or twelve minutes, but during that time, several of the children started fidgeting, and a couple came running back to their parents, obviously distraught.

15. At the end of the performance, Robin offered to hug and give a "pawprint" (Muktuk's version of an autograph) to any children that wanted one. I think this was probably the real reason why many of the children had come to the museum that day – to meet Muktuk in person. However, only about a third of children and parents got in line to meet Muktuk. The rest just milled around not quite sure of what had just happened or quickly left. I could hear several parents talked to each other about how disappointing Muktuk had been. Some parents were clearly very angry at Muktuk over how upset their children were, especially after being so excited to come to the museum that day. I thought these comments were a bit unfair, but I knew it was not my place as a reporter to comment to them on the situation.

16. I decided to go back to Asa Harmadi and Devon Goldman to get their reactions to the performance. I talked to Asa first. Asa expressed disbelief that Muktuk would show up drunk at a performance in front of a large number of children. Asa commented that this was supposed to be a happy event but that instead it left his/her son Thomas crying. I asked Asa if s/he would let Thomas watch Wake Up with Muktuk! again. Asa replied that s/he did not think Thomas would want to after what had happened, but that if he did s/he would explain that Muktuk was not an appropriate role model for children and that he should find another show to watch. I do not remember the exact words that Asa used, but I know that I took everything down in my notes. Asa then volunteered that s/he not only blamed Robin Davies for the poor performance but that s/he also blamed Gerry Constantine for booking Robin Davies. I am not sure why Asa would reach this conclusion, but s/he was so agitated that I did not feel it prudent to inquire further.

17. It was while I was talking to Asa that I noticed Gerry Constantine drag Muktuk out of the room. I went to talk to Gerry, who after a couple of minutes came back into the room. Gerry was clearly furious at what had happened. S/He probably did not want to talk, but knew that s/he had no choice. I asked Gerry why s/he pulled Robin off stage. Gerry responded: "Robin Davies doesn't care for kids as much as s/he would like you to believe. I had to stop this mess to avoid further embarrassment." I asked Gerry what s/he meant by this, and s/he replied: "Robin was clearly drunk, you saw it yourself." I was surprised that Gerry would say something so inflammatory, especially when I thought that Robin was probably just ill. I then asked Gerry what effect s/he thought this would have on the fundraising campaign for the Alaska Children's Museum. Gerry responded: "Well, it can't be good. I have a lot of disappointed parents out there that have lost trust in me and the museum." I started to ask Gerry if s/he thought there was a way to placate all of these angry parents, but Gerry cut me short by saying: "Look, I have to go. Please be as understanding as you can in your article."

18. I should step back and say that I always take very careful notes when I am doing an interview. So, I am very certain that Gerry said that Robin was drunk. I mean, I do not write

down quotes word for word, but I do write down key words. Usually, I bring a tape recorder to interviews so that I can go back afterwards and double check to make sure that I am getting quotes exactly correct. I did not bring a tape recorder to the Alaska Children's Museum that day because I was not expecting anything controversial or fast paced to happen. When this is the case, I can just get by with my notepad. Part of the training for being a reporter is knowing enough about sentence structure that you can recreate statements with only a few notes.

19. After getting done talking to Gerry, I went back to talk to Devon. Devon was not as distraught over Robin's performance as Asa had been. Devon asked me if I knew how Robin was doing. I said that I did not. Devon then commented: "I heard that the performer was ill." I asked Devon if s/he would let Rachel continue to watch Wake Up with Muktuk! Devon responded: "Sure. Something obviously was not right about Muktuk, but everyone has bad days." Devon went on to add: "And Rachel absolutely loves Muktuk. It wouldn't be fair to deprive Rachel of her favorite show just because the performer had a bad day."

20. It was just after I finished talking to Devon that Gerry announced that anyone who wanted a refund of the ticket price for the Kick-Off Celebration would receive one. Several parents formed a line in front of the ticket table to get a refund. I did not count exactly how many parents were requesting a refund, but I would estimate it to be about 15. I felt that I had all the information I needed to write my article and that I would not gain much more by staying around, so I left.

21. I went back to my office to write the article. I tried calling Robin to get a comment from her/him. But unfortunately, the only number I had in my contacts was for Happy Bear Studios, and not surprisingly there was no answer there on a Saturday. And, understandably, Robin has an unlisted home number. So, I had to write the article with only the comments I was able to gather at the museum.

22. Robin did call me on the Tuesday after the article came out to complain about what I had written. I assured Robin that I was only reporting what happened and that the statements made in the article were accurate. Robin asked why I even came to the Kick-Off Celebration, as s/he did not think it was all that newsworthy an event. I informed Robin that Dale Overstreet had called me a few days before to recommend that I cover the Celebration and that it would indeed be "newsworthy." Robin immediately went quiet, thanked me for the information, and hung up.

23. I decided not to write any follow-up articles on what happened that day at the Alaska Children's Museum. I felt there was little news that would come of it, and all another article would do would be to aggravate an already tense situation. It is unfortunate if my article has had a negative effect on the popularity of Muktuk, but that is one of the things you have to learn to live with being a reporter.

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA,  
FIFTH JUDICIAL DISTRICT AT ALASKOPOLIS**

ALASKA CHILDREN’S	)	
MUSEUM CORP.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Case No. 5AK-08-99999 CI
	)	
HAPPY BEAR STUDIOS, INC.,	)	
	)	
Defendant/Counter-Plaintiff.	)	
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**Affidavit of Devon Goldman**

1. Hello. I’m Devon Goldman. I am 33 years old, unmarried, and have a six-year-old daughter named Rachel. She is the light of my life. I guess I was brought into this case because of the whole incident at the Alaska Children’s Museum on Alaska Day.
  
2. Rachel has been a huge fan of Muktuk and the Muktuk show ever since it came on the air. Rachel always looked forward to Saturday mornings at 9:00 a.m., when Muktuk came on TV. I always thought that Muktuk was a positive role model for kids. Muktuk teaches diversity and acceptance, along with a healthy dose of Alaska Native myths and culture. That is always a positive message for kids to hear. I am especially proud that such a wholesome show is actually produced in Alaska.
  
3. I had been meaning to take Rachel to a Muktuk personal appearance for quite some time. I knew this would really make Rachel happy. I would hear about them from time to time, but was always busy or would forget. Then in the beginning of October I started to hear radio commercials for the Museum’s Kick-Off Celebration and how they would have Muktuk there.
  
4. After I heard the radio commercial, I did a little research about the Alaska Children’s Museum on the web. I had heard of the Museum, but I had never taken Rachel there. Just sort of slipped my mind. I didn’t know the Museum had so much to offer. From the website it seemed like a really cool place. As much as I can afford – and I don’t make all that much money – I try to support organizations and activities in Alaskopolis that provide things for kids to do. Plus, if I joined the Museum, I would get \$15 the cost of the Muktuk ticket if I joined, basically making the membership only \$35. So, to me it was a no brainer. I purchased my membership online and bought my ticket to the Kick-Off Celebration at the same time.
  
5. Rachel was really excited when I told her about Muktuk coming to the Alaska Children’s Museum. It was still about two weeks away when I told her. I probably should have waited a little bit longer to tell her. All she talked about for the next couple of weeks was how excited she was to be going to the Museum. I guess it made me happy that she was so excited about going to a Museum. I mean, I was never that way growing up. But, it did get annoying after a while. I bought Rachel a new Muktuk shirt for the event. That made her even more excited.

6. When Alaska Day came, we headed down to the Museum about 45 minutes early. I wanted to make sure that Rachel got a seat near the front. There were already about ten families there when we arrived. I bought Rachel a Muktuk book – one of the few ones we didn't already have – from one of the attendants. I wanted to get Rachel something to keep her busy while we waited for Muktuk. She is just beginning to learn to read and likes to look at the pictures. Also, I wanted Rachel to have something for Muktuk to sign afterwards. The website had said that Muktuk would be staying around after the show to give autographs. I didn't want Rachel to miss this opportunity.

7. Just as I was finishing buying Rachel her book, this reporter – I think her/his name was Lee James – came up and asked me some questions about why we were there and how we felt about Muktuk. I think all of this should have been pretty obvious, but I guess the reporter was just doing her/his job. I told the reporter about how I had just joined the Museum and what a great atmosphere this was and how excited Rachel was to be here. When the reporter asked Rachel what she was thinking, Rachel just smiled and started giggling.

8. I helped Rachel find a place to sit and read her book near the front. I went toward the back of the room and found a chair to sit in and watch. I talked to a few of the other parents back there, and everyone was saying how excited their kids were to see Muktuk. I guess for some of them, this wasn't their first time experiencing Muktuk in person. As more and more families started arriving, the excitement in the room just kept growing and growing.

9. Everyone – all the kids and even some of the parents – cheered loudly when the Museum manager introduced Muktuk. You could tell from the very beginning, though, that Muktuk was a bit off. I'm not sure what it was, really, but it was not the same jovial friendly Muktuk I had seen on the TV shows. This Muktuk was listless and garbled what it was saying. I could tell that Muktuk was talking about Alaska Day and about how kids needed to know their history so that they could plan for the future and all that, but lots of the actual sentences were more or less incoherent. And Muktuk even seemed to slip out of character every once and a while for a split second. Muktuk even was a bit clumsy on stage. I mean, I'm sure it must be hard to move around in that costume and all, but there were a couple of times when I thought Muktuk was going to fall down. Muktuk is much more graceful on the show. Maybe they do multiple takes or something.

10. Several of the parents I was sitting with didn't know what to think. I heard a couple of them whisper under their breath that they thought Muktuk was drunk. It didn't really seem that way to me. I mean, maybe Muktuk was drunk. It was sort of hard to tell because of the costume. A lot of the parents, though, were getting noticeably agitated as the performance went on.

11. You could also see the kids fidgeting. A few kids got up from where they were sitting and ran back and grabbed onto their mom's or dad's leg and had a scared expression on their face. I didn't really see much to be afraid of. I mean, Muktuk was a bit out of character, but it wasn't like Muktuk was intentionally scaring the kids or anything. Muktuk was just having an off day. I guess that a lot of kids get scared when they are confused and don't really know what is happening. Rachel seemed to be handling things fine. At least, she was still sitting in place.

12. Muktuk's performance ended kind of abruptly. Of course, the whole thing was a bit disjointed, so I guess this shouldn't be too surprising. Muktuk asked all the kids who wanted one to come up and get a hug. A lot of the kids, including Rachel, started lining up to meet Muktuk, but I'd say at least half of the kids ran back to their parents, many of them upset. And when a kid is upset, you can pretty sure bet that the parent is going to be upset as well. There was a lot of unrest in the room, and many of the parents were saying how disappointed they were with Muktuk and how Muktuk had been a poor role model and they wouldn't let their kid watch Wake Up with Muktuk! again. I think they were all assuming that Muktuk had been drunk, which seemed to me to be jumping to conclusions.

13. As I was waiting around, this person – I think s/he was one of Muktuk's assistants . . . introduced himself/herself as Reese Mercer – came up to me and apologized for the poor performance that had just happened. Reese said that Robin Davies, the person performing Muktuk, was very ill with a bad flu. Reese said that Robin probably shouldn't have been there that day, but that s/he knew how many kids would be there just to see Muktuk and that s/he didn't want to let all those kids down. I started to get a bit worried about Robin. Like I was saying, Muktuk had seemed a bit out or sorts earlier, and this explained it.

14. I think Robin really must have been sick because when I went to get Rachel after she had gotten her hug and pawprint, I heard another parent say to Robin that s/he should be ashamed of himself/herself. Robin replied, "I'm sorry, I'm really just not feeling that well." I could hear Robin's voice. S/He was not speaking as Muktuk but in what I presume was his/her real voice. Robin sounded sincere. And the voice was more groggy than drunk. I felt so bad for Robin trying to do so much to make kids happy when s/he'd probably much rather be at home in bed.

15. Just as I was getting ready to leave, that reporter, Lee James, approached me again and asked my opinion about what had just happened. I told Lee that it just looked like Muktuk was having a bad day and that everyone has bad days and that it wasn't Robin's fault. I asked Lee if s/he knew if Muktuk was ok. I told Lee that I had heard that Muktuk wasn't feeling well. I figured that Lee would probably know more than I did about how Robin was doing, but s/he didn't. Lee asked if I'd let Rachel continue to watch Muktuk on TV. I looked down at Rachel and asked her if she still liked Muktuk. She was a bit more silent than usual when it came to Muktuk, but she nodded her head yes. So, I told Lee that Muktuk was still such an important part of Rachel's life that it would be a shame to deny her Muktuk just because the performer had one bad day.

16. After talking to Lee, I turned around and Muktuk was gone. The Museum manager then made an announcement that anyone who wanted a refund of today's ticket could get one no questions asked. I thought about asking for a refund of the ticket, or maybe even asking for a refund of my whole membership. But, I decided that my money was supporting a good cause. I don't blame Robin for being sick, and I certainly don't blame the Museum for going forward with the Kick-Off Celebration. These things happen. Sure, I had to do a little bit of explaining to Rachel about how things aren't always as they seem on TV and about how Muktuk was just a little bit under the weather. I think she understood. And the next Saturday she was excited as ever to watch Wake Up with Muktuk! again.

# **III. Exhibits**

## **Muktuk Mayhem at Museum**

**by Lee James**

What was supposed to be a lively event celebrating Alaska history at the Alaska Children's Museum turned into chaos on Saturday. Several parents were upset about what they viewed as an uncharacteristic and troubling performance by the local children's character Muktuk.

Muktuk, who is performed by Robin Davies, appeared as part of the Museum's Kick-Off Celebration for Alaska's 50th anniversary of statehood. The Museum was packed with eager children waiting to see the beloved character.

Muktuk did appear as promised, but gave a ten-minute performance that included slurred speaking and several non-sequiturs.

"It was a debacle," stated Museum director Gerry Constantine. "I am so disappointed in Robin."

As unsettling as Robin's performance was to Constantine, matters deteriorated further afterwards, when the entertainer greeted children and offered to autograph books.

Several children were noticeably upset, and a few started crying, as Muktuk stumbled around and broke out of character at times. After about ten minutes, Constantine pulled the character off stage.

Constantine later commented, "Robin Davies doesn't care for kids as much as s/he

would like you to believe. I had to stop this mess to avoid further embarrassment."

When asked for clarification, Constantine replied, "Robin was clearly drunk, you saw it yourself."

Constantine further commented that s/he feared that what had happened would have a negative effect on the fundraising campaign the Museum was undertaking, saying that this campaign was "vital" to the future expansion of the Museum.

Constantine did offer to refund the admission price for the event to any parents who requested it. Several parents requested and received a refund.

"This was supposed to be a happy event, not one that would leave my kid crying," stated Asa Harmadi. "I'm never going to let my child watch Wake Up with Muktuk! again. Muktuk is a bad role model."

Other parents did not react as strongly. "I heard that the performer was ill," commented Devon Goldman, another parent at the event. "Something obviously was not right about Muktuk, but everyone has bad days." When asked if s/he would let her children continue to watch Wake Up with Muktuk!, Goldman replied that s/he would but that s/he might not go to any more appearances by the character.

Most parents and children departed the Museum soon after the refunds were distributed.

Attempts to reach Robin Davies for comment were unsuccessful. The statehood fundraising campaign continues at the Alaska Children's Museum through January 3, 2009, with events planned for most weekends.



Asa Harmaedi - Thomas 5  
big fan (2)  
1 1/2 yr member  
- history, culture  
"Muktuk is Great!!"

John Sanchez - Beth 7  
joined today  
fan of show  
"Muktuk is my favorite."

### Show began

- Muktuk off
  - slurs words
  - VP Seward
  - broke voice
  - drunk? sick?
  - parents agitated
  - kids crying
- autographs
  - only 1/3 kids in line
  - parents angry
  - more children crying
  - several families leave quickly

(3)

· Asa Goldman

"supposed to be happy event,  
but my son is crying"

"I can't believe Muktuk  
would show up drunk"

· very disappointed  
"I blame both Robin D  
and Museum"

· Gerry Constantine

- fuming - "Robin D doesn't  
care for kids. I stop  
embarrassment."

Robin = drunk "you saw it"

fundraising? "not good"  
"disappointed parents"  
"lost trust"

- be kind

4

• Devon Goldman

"How is performer?"

"Muktuk ill"

• everyone has bad days

• Gerry C offers  
re funds

15 ask

## ARTISTIC SERVICES AGREEMENT

This Artistic Services Agreement (“Agreement”) is entered into this 12th day of August, 2008 (“Effective Date”) by and between the Alaska Children’s Museum, an Alaska corporation with its business address at 1212 Johnson Avenue, Alaskopolis, Alaska, (“PRODUCER”) and Happy Bear Studios, an Alaska corporation with its business address at 347 E. McNees Street, Alaskopolis, Alaska and serving as the legal representative for the character “Muktuk” as performed by Robin Davies (the “ARTIST”). PRODUCER and ARTIST may be alternately referred to as Party, individually, and Parties, collectively.

### I. RECITALS

WHEREAS, PRODUCER is engaged in the production of the Alaska Day Kick-Off Celebration as part of the Alaska Children’s Museum Alaska 50th Anniversary Statehood Celebration in Alaskopolis, Alaska;

WHEREAS, in furtherance of its purpose, PRODUCER employs the services of artists and other talented individuals to supplement the efforts of volunteers and PRODUCER;

WHEREAS, PRODUCER contemplates staging the Event as defined herein; and

WHEREAS, PRODUCER desires to engage ARTIST to render certain professional services, and ARTIST desires to render such services, under the terms and conditions of this Agreement.

NOW, THEREFORE, in exchange for the compensation described herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby warrant, covenant, and agree as follows:

### II. DEFINITIONS

- A. The “Event” subject to this Agreement shall be the Alaska Day Kick-Off Celebration at the Alaska Children’s Museum, located at 1212 Johnson Avenue in Alaskopolis, Alaska, on Saturday, October 18, 2008, beginning at 2:00 p.m.
- B. The “Work” to be performed pursuant to this Agreement shall be a personal appearance at the Event. The ARTIST is expected to arrive the Event no later than half an hour before the start of the Event at the back entrance to the Alaska Children’s Museum. Changing room facilities shall be provided to the ARTIST. The ARTIST shall appear at this Event dressed and performing as “Muktuk,” the live-action character on the syndicated show “Wake Up with Muktuk!” The Work shall include: speaking, in the character of “Muktuk”, for approximately 10 minutes on the meaning of Alaska Day and more generally on the importance of learning about Alaskan history (the “Presentation”); and remaining at Event for one hour after speech to sign autographs (“pawprints”) and be available for photographs. The ARTIST understands the importance of the Event to the fundraising efforts of the Alaska Children’s Museum and to its Alaska 50th Anniversary Statehood Celebration. The ARTIST shall make every effort to appear at the Event in character and behave toward the attendees of the Event and all those in the Company in a professional and friendly manner.

- C. "Company" shall mean and include every person or entity who plays an active role in staging the Event, including without limitation the PRODUCER, its employees and volunteers, the ARTIST, and any other artists or technicians.
- D. A character's "Likeness" means and includes the character's name; the image and appearance of the character's face and/or body; the sound and individual timbre of the character's voice; the character's vocal ability and skill; the character's distinctive style and mannerisms; the character's signature; the character's gestures; and any other mark or attribute that is distinctive to the character.
- E. The "Promotions" mean and include one voice promotion for use in radio advertisements and one video performance for use in television advertisements to promote the Event.

### III. SERVICES

- A. For purposes of staging the Event, the ARTIST will perform the Work on October 18, 2008.
- B. The Artist will:
  - 1. Attend and fully participate at the Event;
  - 2. Attend and fully participate at the Promotions; and
  - 3. Commit to memory all of the music and dialogue necessary in order to perform the Work, without notes or queues except for those reasonable and customary to the Work, prior to the Event.
- C. The time and place for recording of the Promotions shall be arranged at the mutual convenience of the Parties. The script for the Promotions shall be drafted by the PRODUCER and approved by the ARTIST.
- D. There shall be no rehearsals for the Event. The ARTIST is trusted and expected to research and present a historically accurate Presentation. The ARTIST is not expected to seek preapproval of the Presentation with the PRODUCER, but is encouraged to contact the PRODUCER with any questions as to the content of Presentation.
- E. The ARTIST will notify PRODUCER at the earliest reasonable time if the ARTIST sustains or undergoes any material change to the ARTIST's Likeness. In such event PRODUCER, but not the ARTIST, may terminate this Agreement at its sole discretion.
- F. This is a contract for specific performance and can only be satisfied by the actual performance of the ARTIST as described herein. The participation of the ARTIST is crucial to the successful completion of the Event. The ARTIST understands that failure to perform according to the terms of this Agreement will result in liability for any damages that PRODUCER incurs as a result of the failure of the ARTIST to perform. These damages *may* include the return of any ticket sales, any production costs associated with the Event, and any expenses associated with promoting the Event, including without limitation the costs of producing, publishing, and airing the Promotions.
- G. The ARTIST agrees to license the Likeness of the character "Muktuk" for use at the Event and for the Promotions.

#### IV. PAYMENT

PRODUCER agrees to pay Artist One Thousand Dollars (\$1,000) in exchange for ARTIST's services pursuant to this Agreement. This payment shall be made immediately upon the completion of the Event.

ARTIST will be allowed to sell books and any other merchandise associated with the Muktuk character after the Event. PRODUCER agrees that ARTIST shall retain all monies collected resulting from these sales. ARTIST shall be responsible for conducting all sales transactions and shall not be permitted to use equipment owned by PRODUCER in conducting any sales.

#### V. PROFESSIONAL CONDUCT

- A. The ARTIST will perform all services hereunder in a professional and workmanlike manner, and according to the customs and highest standards of professional decorum acceptable in the industry.
- B. In the week prior to the Event, the ARTIST will not, without prior written approval from PRODUCER:
  - 1. Travel outside the city limits of Alaskopolis;
  - 2. Fly in any aircraft; or
  - 3. Change the ARTIST's appearance in any respect such that the ARTIST's Likeness is different at any time during the Run from how the ARTIST's Likeness was presented in any promotional material, including the Promotions.

#### VI. INABILITY TO PERFORM AND ASSOCIATED REMEDIES

- A. If the Event is cancelled or discontinued for any reason prior to the Event and PRODUCER so notifies the ARTIST at least 48 hours prior to the scheduled time for the Event, this Agreement will terminate and PRODUCER will have no obligation to make any of the payments or provisions described herein.
- B. In the event that the ARTIST is physically or legally unable to perform the services contemplated herein through no fault of the ARTIST, and so notifies PRODUCER at least thirty (30) days prior to the Event in writing together with such reasonable proof of the ARTIST's good faith and inability to perform as PRODUCER may demand, this Agreement shall be deemed terminated.
- C. In the event that the Artist is physically or legally unable to perform the services contemplated herein through no fault of the ARTIST prior to the Event, but less than thirty (30) days prior to the Event, the ARTIST will so notify PRODUCER at the earliest reasonable time in writing together with such reasonable proof of the ARTIST's good faith and inability to perform as PRODUCER may demand. PRODUCER will have no further obligation to the ARTIST. Prior to the Event, the ARTIST will assist PRODUCER as PRODUCER may reasonably request to identify, locate, and procure a suitable replacement to perform the Work. The suitability of any proposed replacement shall be at the sole discretion of PRODUCER. If the ARTIST is unable to perform as set forth under this subparagraph, the ARTIST shall not be compensated for any time expended in preparing for the Event. If the ARTIST is able to identify, locate, and procure a suitable replacement to perform the Role, the ARTIST shall be absolved of

responsibility for any damages that the PRODUCER may otherwise incur as a result of the inability of the ARTIST to perform the services contemplated herein.

Accepted and agreed to by the duly authorized signatories below.

PRODUCER, INC.

/s/ August 7, 2008  
Signature Date

Gerry Constantine  
Printed Name

Executive Director, Alaska Children's Museum  
Title

THE ARTIST

/s/ August 7, 2008  
Signature Date

Robin Davies  
Printed Name

President, Happy Bear Studios  
Title

# **IV. Competition Rules**

**RULES GOVERNING THE ALASKA HIGH SCHOOL  
MOCK TRIAL COMPETITION**

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## **I. RULES OF COMPETITION**

### **A. GOVERNING RULES**

#### **Rule 1. Competition Coordinators**

The Alaska High School Mock Trial Championship is sponsored by the Anchorage Bar Association, Young Lawyers Section. A committee comprised of interested members of that organization and other persons, as appropriate, shall organize and oversee all aspects of the competition, and shall be referenced as the competition coordinators. All correspondence with the competition coordinators should be addressed to:

ANCHORAGE BAR ASSOCIATION  
YOUNG LAWYERS SECTION  
P.O. BOX 100844  
ANCHORAGE, AK 99510-0844  
Attn: MOCK TRIAL

#### **Rule 2. Interpretation of the Rules**

All trials will be governed by the current Alaska High School Mock Trial Championship's Rules of Competition and Rules of Procedure and by the Federal Rules of Evidence (Mock Trial Version). Interpretation of the rules is within the discretion of the competition coordinators, whose decisions are final. Any clarification of rules will be issued in writing to all participating teams. Teams who believe that clarification is needed should request clarification in writing.

#### **Rule 3. Code of Conduct**

The Competition rules, as well as proper rules of courthouse and courtroom decorum and security must be followed. The Competition Coordinators will have discretion to impose sanctions, up to and including forfeiture or disqualification, for any misconduct, flagrant rule violations, or breaches of decorum which affect the conduct of a trial or which impugn the reputation or integrity of any team, school, participant, court officer, judge or the mock trial program.

#### **Rule 4. Emergencies**

During a trial, the presiding judge or the competition coordinators shall have discretion to declare an emergency and adjourn the trial for the period of time necessary to address the emergency. If an emergency arises which would cause a team to be unable to continue a trial, or require it to participate with less than six members, the competition coordinators shall have the discretion to determine how to proceed.

#### **Rule 4.5. Food and Beverages in the Courtrooms**

Food and beverages – other than water – are NOT ALLOWED in the courtroom at any time. After receiving a warning, teams that fail to follow this rule are subject to forfeiture of rounds and/or disqualification. Water will be available during the trial for the participating lawyers and witnesses.

## **B. THE PROBLEM**

### **Rule 5. Case Materials**

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

Teams who believe that errors exist in the case materials should bring such errors to the attention of the competition coordinators in writing prior to the start of the competition. Any clarification of case materials will be issued in writing to all participating teams. In preparing and participating in the Competition, students are limited to the supplied case materials, the Governing Rules and the Modified Rules of Evidence.

Participants are not allowed to introduce at trial cases or exhibits not included in the case materials. Reasonable extrapolation will be allowed as explained in Rule 7.

### **Rule 6. Witness Bound by Statements**

Each witness is bound by the facts contained in his/her own witness statement, the Statement of Facts, if present, and/or any necessary documentation relevant to his/her testimony. Fair extrapolations may be allowed, provided reasonable inference may be made from the witness' statement or as explicitly allowed by the case materials. 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 7, outside the scope of the problem.

If, in cross-examination, an attorney asks for unknown information, the witness may or may not respond, so long as any response is consistent with the witness' statement or affidavit and does not materially affect the witness' testimony.

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

### **Rule 7. Unfair Extrapolation**

Unfair extrapolations are best attacked through impeachment and closing arguments and are to be dealt with in the course of the trial. An unfair extrapolation is a statement by a witness at trial that creates a sense of bias for or against a party and which is not supported by the materials provided. A fair extrapolation is one that is neutral toward the outcome of the trial and either based on common knowledge or reasonably inferred from the witness's statement and pertinent exhibits.

Attorneys shall not ask questions calling for information outside the scope of the case materials or requesting an unfair extrapolation. If a witness is asked for information not contained in the witness's affidavit, the answer must be consistent with the statement and may not materially affect the witness's testimony or any substantive issue of the case.

Consistent with the obligation to attack unfair extrapolations through impeachment and closing arguments, attorneys for the opposing team may refer to Rule 7 in a special objection, such as "unfair extrapolation" or "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.

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

Rule 8. Gender of Witnesses

All witnesses are gender neutral. Personal pronoun changes in witness statements indicating gender of the characters may be made. Any team member may portray the role of any witness of either gender. Please try to be mindful of the genders of the witnesses portrayed by the opposing team.

Rule 9. Voir Dire

Voir dire examination of a witness is not permitted. Expert witnesses may be challenged on their qualifications as an expert.

**C. THE TRIAL**

Rule 10. Team Eligibility

Any Alaska high school may assemble one or more teams and become eligible to compete in the Alaska High School Mock Trial Championship Competition. Two or more Alaska high schools may jointly form a team if each school participating in the formation of a joint team would otherwise be unable to participate in the Alaska High School Mock Trial Championship Competition. Educational and civic organizations which are 1) independent of any Alaska high school, 2) not formed primarily for the purpose of competing in the Alaska High School Mock Trial Championship Competition, and 3) comprised of high school students residing in Alaska, may assemble one or more teams and become eligible to compete in the Competition. Alaska high schools wishing to form a team but not qualifying under this Rule may timely request that an exception to this Rule be granted by the competition coordinators. A decision by the competition coordinators as to eligibility under this Rule or an exception to this Rule shall be final. Any team wishing to participate in the Alaska High School Mock Trial Championship Competition must properly register with the competition coordinators in advance of the competition. The competition coordinators will attempt to accommodate all registrants. Any school or other organization wishing to enter multiple teams must designate a “first” team. In the unlikely event that registration must be limited as a result of too many teams attempting to participate, priority will be given to the “first” team over other teams from the same school or organization. In all other aspects, registration will be permitted on a first come, first served basis. Registration will only be limited if the number of teams registered exceeds the capacity of the facilities where the competition is held.

The team that wins the Alaska High School Mock Trial Championship Competition will be deemed the current Alaska State Mock Trial Championship Team and is eligible to participate and compete in the National High School Mock Trial Championship. Any team representing Alaska in the National High School Mock Trial Championship must be comprised of students who participated on the Alaska State Mock Trial Championship team. A team intending to compete in the National High School Mock Trial Championship *must* bring at least seven members to the National Championship. Teams eligible for the National Championship may decline to participate, in which case eligibility will pass to the next highest finishing team in the

Alaska Competition. The Alaska State Mock Trial Championship Team is responsible for its own expenses in attending the National High School Mock Trial Championship Competition. Registration fees (estimated at \$300) incurred by the Alaska State Mock Trial Championship Team in conjunction with participation in the National High School Mock Trial Championship Competition may be paid by the competition sponsors to the extent that budgetary constraints will permit. The Anchorage Bar Association, Young Lawyers Section, may be prohibited from contributing any funds for travel and related expenses.

Rule 11. Team Competition

Teams consist of no less than **six** members and no more than **nine** members, including alternates. Team members are assigned to attorney and witness roles representing the Prosecution/Plaintiff and Defense/Defendant sides in each round of the competition. For each match, a team is required to provide three attorneys and three witnesses, as described below in Rule 12. Teams may rotate participants between rounds at their discretion.

Rule 12. Team Presentation

Teams must present both the Prosecution/Plaintiff and Defense/Defendant sides of the case, using six team members. Different sides will be assigned to teams for different rounds. Only in the case of an emergency may a team participate with less than six members. In such a case, a team may continue in the competition by making substitutions to achieve a two attorney/three witness composition. If an emergency causes a team to use less than three attorneys, the team may be penalized by a reduction of points for that round or may be caused to forfeit the round, depending on the nature of the emergency. Final determinations of emergency, forfeiture, or scoring record will be made by the competition coordinators and are solely at their discretion. If a coach knows his or her team might not be able to field the required six members for a given round, the coach should notify the competition coordinators as soon as possible.

Rule 13. Team Duties

Team members are to evenly divide their duties. Each of the three attorneys will conduct one direct and one cross; in addition, one will present the opening statement and another will present a closing argument. The principal attorney duties for each team will be as follows:

1. Opening Statement
2. Direct Examination of Witness #1
3. Direct Examination of Witness #2
4. Direct Examination of Witness #3
5. Cross Examination of Opposing Witness #1
6. Cross Examination of Opposing Witness #2
7. Cross Examination of Opposing Witness #3
8. Closing Argument

Opening Statements must be given by both sides at the beginning of the trial. The defense does not have the option to reserve their opening statement for the beginning of the presentation of their case.

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

Each team must call three witnesses. Witnesses must be called only by their own team and examined by both sides. Although re-direct and re-cross are permissible, witnesses may not be recalled to the stand after their testimony is complete. Thus, once a witness is excused and steps down, neither team may recall the witness for further questioning even if no re-direct or re-cross was previously conducted. A presiding judge may elect not to allow re-cross examination.

Attorneys are not permitted to ask leading questions on direct or re-direct examination, but may ask leading questions on cross or re-cross examination if they so choose. The scope of cross examination is not limited to the scope of issues raised during direct examination. However, the scope of re-direct examination is limited to issues raised during cross examination, and the scope of re-cross examination, if allowed by the presiding judge, is limited to issues raised during the re-direct examination.

#### Rule 14. Swearing of Witnesses

The following oath, or a similar oath permitted by the presiding judge, may be used before questioning begins:

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

The swearing of witnesses will occur in one of two ways. Either the presiding judge will indicate that all witnesses are to be sworn in collectively at the start of the competition, or the above oath will be conducted by the presiding judge upon the calling of each witness. The presiding judge shall indicate which method will be used during any given round of the Mock Trial Competition. Witnesses must stand during the oath unless physically unable to do so.

#### Rule 15. Trial Sequence and Time Limits

The trial sequence and time limits are as follows:

1. Opening Statement (5 minutes per side)
2. Direct and (optional) Re-direct Exam (20 minutes total per side)
3. Cross and (optional) Re-cross Exam (15 minutes total per side)
4. Closing Argument (5 minutes per side)

The Prosecution/Plaintiff is the first to present the opening statement and give the closing argument. The Prosecution/Plaintiff may reserve a portion of the time allotted for closing argument to present a rebuttal. Rebuttal is limited to the scope of the opposing side's argument. The Defendant shall not be permitted rebuttal during closing argument.

The time allotted for examination of the witnesses is the combined time for all three witnesses. Teams may allocate their available time between each witness and between direct/re-direct or cross/re-cross examination as they choose. Extensions of time may be granted as set forth in Rule 17. If a team fails to present direct examination of a witness, that team will receive zero (0) points for that round for both the attorney and the witness; the cross-examining attorney

will receive the average score of the other cross-examining attorneys. If a team fails to present a cross-examination because their time for cross-examination has expired, that team will receive zero (0) points for that attorney.

Rule 16. Timekeeping

Time limits are mandatory and will be enforced. Where possible, teams will be permitted to have one additional student at the table with the attorneys. This student must be a team member but need not be a witness in that particular match. This person may serve as a student timekeeper, but may not consult with the student attorneys other than to convey available time. Student timekeepers are not considered “official timekeepers” in the tournament. In criminal trials, the timekeeper may be the Defendant if the team so chooses, but teams will not be allowed an additional timekeeper at the table in addition to the Defendant. Time for objections, extensive questioning from the judge, or administering the oath will not be counted as part of the allotted time during examination of witnesses and opening and closing statements. Time does not stop for the introduction of exhibits.

Rule 17. Time Extensions and Scoring

The presiding judge has sole discretion to grant time extensions. Teams will not be given additional time during opening or closing arguments for failure to budget time properly, though the attorney will be allowed to conclude his or her argument. A team that runs out of time during either direct or cross examination of witnesses may request a two minute extension of time. Extensions of time will be granted only in two-minute increments and are at the discretion of the presiding judge. A team requesting an extension of time will be assessed a penalty of four (4) points against that team’s overall score for each extension of time granted; the penalty will be recorded in the “penalty” section of each judge’s score sheet.

Rule 18. Prohibited Motions

Except as provided in these Rules, no motions may be made. (A motion for directed verdict, acquittal, or dismissal of the case at the end of the Prosecution’s case, for example, may not be used.) A motion for a recess may be used in the event of an emergency (e.g., health emergency). To the greatest extent possible, team members are to remain in place. Should a recess be called by the court, teams are not to communicate with any observers, timekeepers, coaches, or instructors during the recess.

Rule 19. Sequestration

Teams may not sequester witnesses belonging to the other team.

Rule 20. Bench Conferences

Bench conferences may be granted at the discretion of the presiding judge, but should normally be conducted in such a manner that all participants, scoring judges, instructors, alternates, and other courtroom observers can hear the arguments and discussions in their entirety. This Rule is designed to further the educational interests of the Alaska High School Mock Trial Competition. Bench conference time shall not be counted against the time allotted to either team.

Rule 21. Supplemental Materials/Illustrative Aids

Teams may refer to and use as exhibits only the 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, except for personal use by team members. Absolutely no props or costumes are permitted unless authorized specifically in the case materials.

Rule 22. Trial Communication

Instructors, alternates, and observers shall not talk to, signal, communicate with, or coach their teams during trial. This Rule remains in force during any recess time that may occur during the course of the trial. Team attorneys may, among themselves, communicate during the trial; however, no disruptive communication is allowed. Signaling of time by the teams' own timekeepers shall not be considered a violation of this Rule. Non-team members, alternate team members, teachers, and coaches must remain outside the bar in the spectator section of the courtroom. Witnesses must remain outside the bar except when called to the stand. Only team attorneys participating in a round and a designated timekeeper may sit inside the bar during that round.

Rule 23. Viewing a Trial

Each team is responsible for the conduct of its members and persons associated with the team throughout the duration of the mock trial competition. Team members, alternates, attorney-coaches, teacher-sponsors, parents, and any other persons directly associated with a mock trial team may view their team competition, but otherwise, except when specifically authorized by the competition coordinators, are not allowed to view other teams in the competition.

Nothing may be brought into the courtroom which would tend to reveal the identity of the participating teams. Spectators should be cautioned that they may not wear school logos or insignias. School-owned equipment should have all identifying marks covered.

Viewing of the competition by members of the public shall be allowed so long as it does not disrupt the conduct of the trial. All persons in the courtroom shall show respect for the conduct of the proceedings.

Rule 24. Videotaping/Photography/Audiotaping

Any team may videotape or audiotape a competition round in which it participates for its own educational purposes only. With the consent of an opposing team, any team may videotape or audiotape a competition round for any other purpose. Bright camera lights, flash bulbs and equipment tending to distract the competitors may be barred in the discretion of the presiding judge. Disruptive conduct in the course of taping, filming, or taking photographs is prohibited, and may result in a penalty against the team responsible for the conduct of the offending photographer.

If school owned equipment is employed for video or audiotaping, identifying information must not be visible on such equipment that might be seen by a judge.

Media coverage will be allowed in accordance with the policies of the competition coordinators. Competition coordinators will be permitted to photograph or otherwise record the competition for promotional purposes.

## **D. JUDGING**

### **Rule 25. Decisions**

All decisions of the judges regarding scoring are FINAL.

### **Rule 26. Composition of the Judging Panel**

The judging panel will consist of individuals determined to be eligible by the competition coordinators. Generally, the competition judges are members of the Alaska judiciary (including law clerks) or attorneys practicing in Alaska. Qualified educators, paralegals, and other persons may also be invited by the competition coordinators to participate as Mock Trial judges. The composition of the judging panel and the role of the presiding judge will be at the discretion of the competition coordinators. For preliminary rounds, one presiding judge and two additional scoring judge will be appointed by the competition coordinators to judge the round. The final (championship) round may have a larger judging panel than preliminary rounds, at the discretion of the competition coordinators.

All presiding and scoring judges receive the mock trial manual, a memorandum outlining the case, orientation materials, and a briefing as to the case, the role of judges, and the standards to be applied. These materials will not be available to the team members.

### **Rule 27. Score Sheets**

The presiding judge and each additional scoring judge shall complete a “score sheet” for each trial conducted in each round of the competition. Judges’ score sheets will be substantially like the sample provided by the competition coordinators to each team. When evaluating the teams that each judge observes in the competition, the judges will reference the teams only by their assigned identification codes.

Score sheets are to be completed individually by the judges and without consultation with the other judges. Scoring judges are not bound by the rulings of the presiding judge. While the judging panel may confer within guidelines established by the competition coordinators, the judging panel should not deliberate on individual scores.

There will be a space on the score sheet for judges to deduct points at their discretion if a team exhibits poor courtroom etiquette or makes excessive unwarranted objections. At the option of the competition coordinators, there may be a mechanism for awarding certificates of recognition based on individual performance.

### **Rule 28. Completion of Score Sheets**

Score sheets are completed by the judges as follows:

1. **Trial Points:**  
Each judge will award and record a number of points for each aspect of the trial. Points will be awarded from a scale of 1 to 9, with 9 being the highest. Judges are required to complete the ballots in their entirety.
2. **Final Point Total:**  
A team is determined to be the winner of a round when that team wins a majority of the points cast by the judges scoring a given trial. If the opposing teams for a given round each receive the same number of points for that trial, the competition

coordinators shall consider the judges' determinations of tiebreaker points, as provided in the tiebreaker box on each score sheet.

3. Bonus Points:

The Mock Trial Committee may decide to award a bonus per score sheet to the team that wins that score sheet. The Committee will announce well in advance of the Competition whether a bonus will be awarded, and if so what the amount of the bonus will be.

A forfeiting team will receive a loss for purposes of ranking. If a trial cannot continue due to forfeiture, the non-forfeiting team shall be considered to have won by default. A non-forfeiting team will not be penalized in ranking by any inability to receive points from scoring judges. The non-forfeiting team will be awarded the average number of points from its remaining rounds.

Rule 29. Team Advancement

Teams will be ranked based on the total number of points received for all rounds. If a semi-final round is to be held, the team with the most points will face the team with the fourth most points, and the team with the second most points will face the team with the second most points. In the semi-final round, the team with the greater number of points in the preliminary round will get the choice of which side to represent.

If no semi-final round is held, the two teams emerging with the greatest number of points from the preliminary rounds will advance to the final round. If a semi-final round is held, the two teams who emerge victorious from their respective match-ups will face off in the final round. Sides in the final round, regardless of how the teams are selected, will be determined by a coin flip in which "heads" will represent Team A as the Plaintiff/Prosecution and "tails" will represent Team B as the Plaintiff/Prosecution.

In the event of a tie in determining placement, the advancing team(s) will be determined by the overall win-loss record in the preliminary rounds, then if necessary by head-to-head competition (if any) between the tied teams, and finally by the total number of highest scores (9 out of 9) on all score sheets combined.

Score sheets from only the championship round will determine the current Alaska State Mock Trial Championship Team.

Rule 30. Selection of Opponents for Each Round

A random lottery will be conducted prior to the competition for the purpose of assigning team identification designations. The schedule governing the assignment of opponents will designate which team is to present the Prosecution/Plaintiff's case and which is to present the Defense/Defendant's in each round. To the greatest extent possible, teams will alternate side presentation in subsequent rounds. Every effort will be made to ensure that each team will present each side twice, but all teams will be scheduled to present each side of the case at least once. Individual teams will be sent their schedule by the Tuesday before the competition. Coaches should immediately notify the competition coordinators of any scheduling conflicts.

Rule 31. Merit Decisions

Judges will make a ruling on the legal merits of the trial, after deliberating. This determination shall be made independent of the scores awarded to each team. During the

debriefing process, judges may inform students of the verdict on the merits of the case. Judges may not inform the students of score sheet results.

Rule 32. Effect of Bye

A “bye” becomes necessary when an odd number of teams are present for the tournament. If an odd number of teams are competing, an additional round will be scheduled, during which those teams receiving a bye will compete against each other. Any team receiving a bye must not observe other teams competing during the round in which the bye was drawn.

**E. DISPUTE SETTLEMENT**

Rule 33. Reporting a Rules Violation Inside the Bar

Disputes which (a) involve students competing in a competition round and (b) occur during the course of a trial must be filed immediately upon conclusion of the trial. 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 presiding judge will instruct the student attorney to prepare a notice of dispute, in 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 permitted under this Rule.

Rule 34. Dispute Resolution Procedure

Upon receipt of a Rule 33 notice of dispute, 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 his/her 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 representative. After the designated representatives 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 designated representative three minutes for a presentation. The judge may question the designated representatives. 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 his/her ruling on the dispute. That decision will be recorded in writing on the dispute form, with no further announcement.

Rule 35. Effect of Violation on Score

If any judge, whether presiding or scoring, observes independently that a substantial rules violation has occurred, or if the presiding judge makes such a determination in accordance with Rule 34, the judge will inform each of the other judges for that trial. The presiding judge shall inform all other judges who score a trial in which a notice of dispute is submitted of the nature and existence of the dispute, and in the event that some or all of the scoring judges are not present for resolution of the dispute, the presiding judge shall provide a summary of each team’s

argument and any decision rendered as to the dispute. Each scoring judge will consider the dispute before reaching his or her 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 36.        Reporting of Rules Violation Outside the Bar**

Disputes which arise from matters not governed by Rule 33 may be brought exclusively by a team's official faculty advisor or attorney-coach. Such disputes must be made promptly to the competition coordinators, who may ask the complaining party to state the complaint in writing. The competition coordinators will select and appoint a dispute resolution panel which will (a) notify all pertinent parties; (b) allow time for a response, if deemed by the dispute resolution panel to be appropriate; (c) investigate, if deemed by the dispute resolution panel to be appropriate; (d) conduct an informal hearing, if deemed by the dispute resolution panel to be appropriate; and (e) rule on the charge. The dispute resolution panel may notify the judging panel of the affected courtroom of the ruling on the charge.

**F.        BEFORE THE TRIAL**

**Rule 37.        Team Roster**

Copies of the team roster must be completed and duplicated by each team prior to arrival for trial. Teams must be identified ONLY by the code assigned at registration. No information identifying a team's city or school of origin should appear on the form or any materials brought into the courtroom. Before beginning a trial, the teams must exchange copies of the Team Roster Form. Copies of the Team Roster Form should also be made available to the judging panel before each round.

**Rule 38.        Stipulations**

When the Court asks the Prosecution/Plaintiff if it is ready to proceed with opening statements, the attorney assigned the opening statement should offer the stipulations into evidence.

**Rule 39.        The Record**

The stipulations, indictment, and jury instructions, if any, will not be read into the record at trial. However, all such documents will be considered as part of the record and as governing the legal framework of the case. Students should assume that the judges are familiar with these documents.

**G.        BEGINNING THE TRIAL**

**Rule 40.        Jury Trial**

The case will be tried to a jury consisting of the scoring judge(s), who shall serve as the official timekeeper(s). Arguments are to be made to the judge and jury. Teams may address the scoring judges and any other persons permitted by the presiding judge to sit in the jury box as the jury.

Rule 41. Standing During Trial

Unless excused by the presiding judge, attorneys will stand while giving opening and closing statements, during direct and cross examinations, and for all objections. Attorneys may request permission to walk around the courtroom during their presentation.

Rule 42. Objection During Opening Statement/Closing Argument

No objections may be raised during opening statements or during closing arguments. If a team believes an objection would have been necessary during the opposing team's closing argument, a student attorney, following the arguments, may seek to be recognized by the presiding judge and may say "If I had been permitted to object during closing arguments, I would have objected to the opposing team's statement that \_\_\_\_\_." The presiding judge need not rule on this "objection." Presiding and scoring judges will weigh the "objection" individually. No rebuttal by the opposing team will be heard. It is recommended that students cite Mock Trial Rule 42 if making an objection to an opening statement or closing argument.

## H. PRESENTING EVIDENCE

Rule 43. Argumentative Questions

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

Rule 44. Admission of Evidence

Attorneys shall lay a proper foundation prior to moving for the admission of evidence. After motion has been made, the exhibits may still be objected to on other grounds. Objections not made upon an attempt to admit evidence as an exhibit will be considered waived.

Affidavits may not be introduced as evidence, but may be used for impeachment purposes. Affidavits for witnesses not called to testify may not be introduced to the court.

Rule 45. Procedure for Introduction of Exhibits

The following steps are *examples* by which evidence may be effectively introduced:

1. All evidence will be pre-marked as exhibits.
2. Ask for permission to approach the bench. Show the presiding judge the marked exhibit. "Your honor, may I approach the bench to show you what has been marked as Exhibit No. \_\_\_?"
3. Show the exhibit to opposing counsel.
4. Ask for permission to approach the witness. Give the exhibit to the witness.
5. "I now hand you what has been marked as Exhibit No. \_\_\_ for identification."
6. Ask the witness to identify the exhibit. "Would you identify it please?"
7. Witness answers with identification only.
8. Offer the exhibit into evidence.
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.)
10. Opposing Counsel: "No, your Honor," or "Yes, your Honor." If the response is "yes", the objection will be stated on the record. Court: "Is there any response to the objection?"
11. Court: "Exhibit No. \_\_\_ is/is not admitted."

Rule 46. Admission of Expert Witnesses

If a team wishes to admit a witness as an expert in a particular area of knowledge, the attorney performing the direct examination must establish foundation to the satisfaction of the presiding judge for admission as an expert. Voir dire by the opposing attorney will not be allowed, but the opposing attorney may object that insufficient foundation has been laid to qualify the witness as an expert in the field asserted.

Rule 47. Use of Notes

Attorneys may use notes in presenting their cases. Witnesses are not permitted to use notes while testifying during the trial. Affidavits of a particular witness may be used to refresh the memory of that witness or for impeachment purposes. Attorneys may consult with each other at counsel table verbally or through the use of notes.

Rule 48. Re-direct/Re-cross

Re-direct and re-cross examinations are permitted to use exhibits introduced by the other party, provided that any examinations conform to the restrictions in Rule 611(d) in the Modified Rules of Evidence (Mock Trial Version).

**I. CLOSING ARGUMENTS**

Rule 49. Scope of Closing Arguments

Closing arguments must be based on the actual evidence and testimony presented during the trial. Attorneys may not cite to affidavits of witnesses not called at trial.

**J. CRITIQUE**

Rule 50. The Critique

The judging panel is allowed time for debriefing at their option and time permitting. Judges will not reveal the scores attributed by them to individual performances, nor will they reveal which team was the winner of the round on the score sheets. The judges may announce the winner of the case on the merits and may discuss or comment upon the presentations in furtherance of the educational interests of the Alaska High School Mock Trial Competition.

## **II. MODIFIED RULES OF EVIDENCE** (Alaska Mock Trial Version)

In American trials, complex rules are used to govern the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that all parties receive a fair hearing and to exclude evidence deemed irrelevant, incompetent, untrustworthy, unduly prejudicial, or otherwise improper. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial. In the absence of a properly made objection, however, the judge will probably allow the evidence. The burden is on the mock trial team to know the Rules of Evidence (Alaska Mock Trial Version) 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 Alaska and Federal Rules of Evidence and their (shared) numbering system. When rule numbers or letters are skipped, those rules were deemed not applicable to mock trial procedure. Text in italics, other than topic headings, represents simplified or modified language from the Alaska and Federal Rules of Evidence. Departures from the actual Federal Rules of Evidence are for informational purposes only. These Rules of Evidence are to be interpreted as written.

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 Rules of Evidence (Alaska Mock Trial Version) govern the Alaska High School Mock Trial Competition.

### **Article I. General Provisions**

#### Rule 101. Scope

*These Rules of Evidence (Alaska Mock Trial Version) govern the trial proceedings of the National Mock Trial Championship.*

#### Rule 102. Purpose and Construction

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

### **ARTICLE II. Judicial Notice**

#### Rule 201. Judicial Notice of Fact

(a) *Scope of Rule.* This rule governs only judicial notice of facts. Judicial notice of a fact as used in this rule means a court's on-the-record declaration of the existence of a fact normally decided by the trier of fact, without requiring proof of that fact.

(b) *General Rule.* A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within this state or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice as specified in subdivision (b), whether requested or not.

Rule 202. Judicial Notice of Law

(a) *Scope of Rule.* This rule governs only judicial notice of law.

(b) Without request by a party, the court shall take judicial notice of the common law, the Constitution of the United States and of this state, the public statutes of the United States and this state, the provisions of the Alaska Administrative Code, and all rules adopted by the Alaska Supreme Court.

**ARTICLE III. Presumptions**

Rule 301. Presumptions in General in Civil Actions and Proceedings

(a) *Effect.* In all civil actions and proceedings when not otherwise provided for by statute, by judicial decision or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. The burden of going forward is satisfied by the introduction of evidence sufficient to permit reasonable minds to conclude that the presumed fact does not exist. If the party against whom a presumption operates fails to meet the burden of producing evidence, the presumed fact shall be deemed proved, and the court shall instruct the jury accordingly. When the burden of producing evidence to meet a presumption is satisfied, the court must instruct the jury that it may, but is not required to, infer the existence of the presumed fact from the proved fact, but no mention of the word "presumption" may be made to the jury.

(b) *Prima Facie Evidence.* A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a presumption within the meaning of this rule.

(c) *Inconsistent Presumption.* If two presumptions arise which conflict with each other, the court shall apply the presumption which is founded on the weightier considerations of policy and logic. If there is no such preponderance, both presumptions shall be disregarded.

Rule 303. Presumptions in General in Criminal Cases.

(a) *Effect.*

(1) *Presumptions Directed Against an Accused.* In all criminal cases when not otherwise provided for by statute, by these rules or by judicial decision, a presumption directed against the accused imposes no burden of going forward with evidence to rebut or meet the presumption and does not shift to the accused the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. However, if the accused fails to offer evidence to rebut or meet the presumption, the court must instruct the jury that it may, but is not required to, infer the existence of the presumed fact from the proved fact, but no mention of the word "presumption" shall be made to the jury. If the accused offers evidence to rebut or meet the presumption, the court may instruct the jury that it may, but is not required to, infer the existence of the presumed fact from the proved fact, but no mention of the word "presumption" shall be made to the jury.

(2) *Presumptions Directed Against the Government.* In all criminal cases when not otherwise provided for by statute, by these rules, or by judicial decision, a presumption directed

against the government shall be treated in the same manner as a presumption in a civil case under Rule 301.

(b) *Prima Facie Evidence.* A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a presumption within the meaning of this rule.

(c) *Inconsistent Presumptions.* If two presumptions arise which conflict with each other, the *court* shall apply the presumption which is founded on the weightier considerations of policy and logic. If there is no such preponderance, both presumptions shall be disregarded.

#### **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**

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 a *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 the 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 in which evidence of character or a character trait is admissible, proof may be made by testimony as to reputation or by

testimony in the form of an opinion. On cross-examination, *questions may be asked regarding* relevant specific instances of conduct.

- (b) *Specific instances of conduct* – In cases in which character or a character trait is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person’s conduct.

Rule 406. Habit; Routine Practice

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

Rule 407. Subsequent Remedial Measures

When 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 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 410. Inadmissibility of Pleas, Pleas Discussions, and Related Statements

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

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

Except as otherwise provided by the Constitution of the United States or of this state, by enactments of the Alaska Legislature, or by these or other rules promulgated by the Alaska Supreme Court, no person, organization, or entity has a privilege to:

- (1) refuse to be a witness; or
- (2) refuse to disclose any matter; or
- (3) refuse to produce any object or writing; or
- (4) prevent another from being a witness or disclosing any matter or producing any object or writing.

## **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.

### **Rule 607. Who may Impeach**

- (a) Subject to the limitation imposed by these rules, the credibility of a witness may be attacked by any party, including the party calling the witness.
- (b) Evidence proffered by any party to support the credibility of a witness may be admitted to meet an attack on the witness' credibility.

### **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 had 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 Court determines that probative value of the conviction outweighs its prejudicial effect.*
- (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.

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 opposing 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 Statement 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 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, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case. *A witness shall not be permitted to testify as an expert until designated by the Court as an expert. An expert witness shall only be considered an expert in the fields designated by the Court, as requested by the party seeking expert designation.*

**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 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 purpose of medical diagnosis or treatment* – Statements made for the purpose of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to 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) *Business Records* – A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge acquired of a regularly conducted business activity, and if it was the regular practice of that business activity to make and keep 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.
- (7) *Absence of Record* – Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of subdivision (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.
- (8) *Public Records and Reports* – (a) To the extent not otherwise provided in (b) of this subdivision, records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to

which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law.

- (9) *Records of Vital Statistics* – Records or data compilations, in any form, of birth, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.
- (10) *Absence of Public Record or Entry* – To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, ... that diligent search failed to disclose the record, report, statement, or data compilation, or entry.
- (11) *Records of Religious Organizations* – Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.
- (12) *Marriage, Baptismal, and Similar Certificates* – Statements of facts contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.
- (13) *Family Records* – Statements of fact concerning personal or family history contained in family bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings and urns, crypts, or tombstones, or the like.
- (14) *Records of Documents Affecting an Interest in Property* – The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.
- (15) *Statements in Documents Affecting an Interest in Property* – A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document.
- (16) *Statements in Ancient Documents* – Statements in a document in existence twenty years or more the authenticity of which is established.
- (17) *Market Reports, Commercial Publications* – Market quotations, tabulations, lists, directories, codes, standards, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.
- (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.
- (23) *Other exceptions* – A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (a) the statement is offered as evidence of a material fact; (b) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (c) the general purposes of these rules and the interest of justice will best be served by admission of the statement into evidence.

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 his statement; or

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

(3) establishes a lack of memory of the subject matter of his 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 his statement has been unable to procure his attendance (or in the case of a hearsay exception under subdivision (b) (2), (3), (4), or (5), of this rule, his attendance or testimony) by reasonable means including process.

A declarant is not unavailable as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of his 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 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.* 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 his 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, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) *Other Exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.

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.

## EVALUATION GUIDELINES

The competition judges are given instructions on how to evaluate the performance of participating teams and individuals. The following guidelines, as well as additional instructions that are not included here, are included in the material provided to the competition judges. Participating teams may assume that the winning team will excel in the following ways:

### ATTORNEYS:

#### **DEMONSTRATED SPONTANEITY:**

- in response to witnesses and/or the court;
- in the overall presentation of the case; and
- in making and responding to objections, capitalizing on opportunities which arise during trial.

#### **DEMONSTRATED COMMAND OF THE FACTS AND ISSUES** in the case and attorney's understanding of the relevant points of law.

When examining witnesses, attorney **PHRASED QUESTIONS PROPERLY** and demonstrated a clear understanding of trial procedure and the simplified rules of evidence used for the mock trial competition.

The attorney's questions:

- were clearly stated, concise, and to the point;
- resulted in straightforward answers from the witness;
- brought out information important to the case; and
- brought out contradictions in testimony.

Opening statements and closing arguments were **ORGANIZED AND WELL-REASONED** presentations, with the closing argument emphasizing the strengths of the attorney's own side and addressing the flaws exposed by the opposing attorneys during trial.

### WITNESSES:

Testimony was **CONVINCING** and characterizations were **BELIEVABLE** and **CONSISTENT** with the affidavits and character descriptions. **PREPARATION** and **SPONTANEITY** were evident in the manner witnesses handled questions posed to them by the attorneys.

### TEAMS:

Courtroom **DECORUM AND COURTESY** by all team members and coaches were observed. Affiliated observers were not disruptive. All participants were **ACTIVE** in the presentation of the case.

2009 ALASKA HIGH SCHOOL  
MOCK TRIAL CHAMPIONSHIP COMPETITION  
(Anchorage, March 27-28, 2009)

**TEAM REGISTRATION FORM**  
(Please CLEARLY print name and contact information)

School (Organization) Name: \_\_\_\_\_

Team Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Teacher or other School Advisor: \_\_\_\_\_ T-Shirt Size: \_\_\_\_\_

Advisor Contact Phone: \_\_\_\_\_ Message Phone: \_\_\_\_\_

Advisor FAX Number: \_\_\_\_\_ **E-Mail:** \_\_\_\_\_

Attorney Coach: \_\_\_\_\_ T-Shirt Size: \_\_\_\_\_

Coach Contact Phone: \_\_\_\_\_ Message Phone: \_\_\_\_\_

Coach FAX Number: \_\_\_\_\_ **E-Mail:** \_\_\_\_\_

Student Team Members (Please print names in block lettering)

(T-Shirt Size)	(T-Shirt Size)
( )	( )
( )	( )
( )	( )
( )	( )
( )	( )
( )	( )

Each team must have a minimum of six student members. No team may have more than nine members, including alternates. The assistance of attorney coaches is recommended, but not mandatory. Schools wishing to register more than one team may designate the same teacher or other school sponsor as the official school advisor. A different registration form must be submitted for each team. Any school wishing to register multiple teams **MUST** indicate which team is the "First Team," "Second Team," etc. **All teams must be registered *no later than March 13, 2008.***

TO REGISTER A TEAM, PLEASE RETURN THIS FORM WITH THE REGISTRATION FEE OF \$150 PER TEAM TO:

ANCHORAGE BAR ASSOCIATION  
YOUNG LAWYERS SECTION  
P.O. BOX 100844  
ANCHORAGE, ALASKA 99510-0844