

HONOR CODE

Any attempt, direct or indirect, to contact the attorneys or the parties, or to examine the case file or briefs in this case or any case that raises similar issues is prohibited. If you are assigned any reading or have class discussion related to the case, please contact Bill Fernholz (643-4447; wfernholz@law.berkeley.edu) immediately.

You may only receive limited assistance from others in writing the brief or preparing oral argument, as described in the next two paragraphs:

Brief - The brief should be entirely your work. Faculty members and others may not review, edit, or write any part of the brief. You may have one person who is not a lawyer proofread your brief for grammar, spelling, and punctuation only. In discussing the specifics of the case, you may consult only with the Competition Directors (Joel Wallace and Brent Nakamura) and Bill Fernholz. You may not cooperate or collaborate with any other students in the competition. You may not discuss any substantive legal issues with other competitors. You may consult with any non-competitor only about general issues – if you have a question about this provision, please contact Bill Fernholz.

Oral Argument – You may consult only with the Competition Directors and Bill Fernholz about the specifics of your argument. You may practice your argument with anyone except other McBaine competitors, Board of Advocates officers, or lawyers. This student may not “moot” you – that is, she or he may not interrupt to ask you questions during practice. This student may only provide general comments on style and performance, but may not provide comments on the substantive aspects of your argument. You may not record or attend the oral argument of another student until you are eliminated, and then only during the semifinal and final rounds. You may not have another person attend an oral argument for purpose of advising you about the substance of the argument or the questions asked, nor may you attend an oral argument for those purposes.

Violations of any of these rules shall be treated as a violation of the Boalt Hall Honor Code. You have agreed to abide by these rules by signing the Side Preference Sheet.

NO LATE DROPS

We will not allow any students to add or drop McBaine Moot Court after December 19, 2009. We must have this rule, because scheduling of competitors, rooms and judges depends on a fixed count of students.

1. ELIGIBILITY

All second- and third-year J.D. students enrolled at the University of California, Berkeley School of Law are eligible to participate. First year students may not participate. There are no prerequisite classes or try-outs. Students are encouraged to attend one of the two information sessions in the Fall or to consult with the Competition Directors or Bill Fernholz, but are not required to do so. Students are officially deemed competitors upon enrollment in the course and submission of the side preference sheet.

2. SIDE PREFERENCES

This year, we are releasing side preference assignments in two batches. This is to provide competitors with greater flexibility – students may elect to be assigned a side either at the beginning of Fall Examinations or at the end of Fall Examinations.

Batch One – If you would like to receive your side assignment at the end of Fall Examinations, you must return your Side Preference Sheet to Bill Fernholz’s office, 375 Boalt Hall, no later than 12:00 p.m. on Tuesday, Dec. 1, 2009. If you have no side preference, but would like to be assigned a side, mark “No Preference.” You must sign your agreement to abide by the Rules. Side assignments will be released Thursday, Dec. 19, 2009 at 5:00 p.m. via e-mail to all competitors.

Batch Two – If you would prefer to wait before expressing your side preference, you have until 12:00 p.m. on Friday, Dec. 18, 2009. Again, submit your Side Preference Sheet to Bill Fernholz’s office, 375 Boalt Hall. You may still elect “No Preference.” Side assignments will be released on Saturday, Dec. 19, 2009 at 7:00 p.m. via e-mail to all competitors.

3. LEGAL RESEARCH

(a) Generally, you are not limited to a closed, specified universe of legal authority, as in some other moot court competitions and in first year written and oral advocacy. You may cite any relevant legal authority, subject to the requirements of the Honor Code above (i.e. you may not consult or cite to any briefs on the case or any cases raising related issues—those cases include but are not limited to the cases listed on the “Forbidden Cases” link on the Competition Website (<http://www.law.berkeley.edu/5185.htm>)) and the following provisions, (b) and (c). Case law and statutory authority may be cited from any date, even after the filing of the decision in the Louisiana Court of Appeals.

(b) Media Stories – you may not read or consult with stories in the popular media about the case if they are dated after the filing of the Louisiana Court of Appeals Decision in the case (e.g., a New York Times or Washington Post article), *i.e. you may not read any media stories about the case after May 16, 2007.*

(c) Other Secondary Literature – you may not read or consult other secondary literature about the case if dated after the filing of the Court of Appeals’ decision (e.g., a law review article, case comment, or blog post), *i.e. you may not read any related secondary literature after May 16, 2007.*

(d) Affirmative Duty to Report Potentially Related Materials – you have an affirmative duty to ask about any questionable material, *i.e.* material that may run afoul of Rules 3(a)-(c) above. Please send any such questions to Bill Fernholz or the Competition Directors. You will receive an answer quickly.

4. SCORING, AWARDS, AND COMPETITION ADVANCEMENT

(a) **Scoring and Awards.** Judges will score the oral arguments on the quality of the presentation and arguments, not on the merits of the case. There are four awards available: (1) Best Oral Argument given to the winner of the McBaine competition final round; (2) Finalist/Runner-Up given to the other finalist; (3) Best Petitioner Brief; and (4) Best Respondent Brief. Sample scoring sheets are available on the Competition website. These scoring sheets list the criteria the judges and brief graders will consider as well as the maximum number of points

they may award for each part of the brief and argument. The judges will be given copies of the students' briefs before the competition so they will be familiar with their arguments. The judges may provide written comments on the brief itself. Any briefs with comments on them will be returned to the students after the oral argument. The completed scoring sheets are confidential, and will not be released to the students.

Although a student may not advance to later rounds of oral argument, he or she may still win an award based solely on the quality of the written brief. A separate panel of appellate specialists and/or faculty members will review the three briefs from each side that received the highest scores in the preliminary round. This separate panel's independent review of the top briefs will determine the winners of the awards for best brief.

The briefs will be graded by members of the Board of Advocates and faculty members. Each brief will have no fewer than two graders each. Grading will be done on a blind review basis where each brief will be assigned a number known only to a non-grader administrator before being given to each grader. This new scoring system is necessary because of the compressed nature of the competition this year, as all work for the competition will be completed prior to Spring Break and the turnaround time from brief deadline to the end of the preliminary rounds is short.

(b) **Oral Arguments – Preliminary Rounds:** For the preliminary rounds, all students participating in the competition will argue before panels of three judges comprised of experienced alumni, appellate practitioners and faculty members. The top four scores from each side will advance to the quarter-final round, from which two from each side will advance to the semi-final round. These rounds will be judged by Boalt Hall professors, judges, and distinguished appellate practitioners. Two students (one from each side) will advance to the final round, which will be judged by a panel of three judges.

(c) **Oral Arguments – Elimination Rounds:** Students advance in the competition based upon the strength of the written brief and the oral argument. The brief is given 50% weight and the oral argument given 50% weight in the preliminary rounds. In all rounds thereafter, students advance to subsequent rounds based solely on the quality of the oral argument – the higher score of each elimination round matchup shall move on to the next round. For the Quarterfinals, decisions and pairings for the Semifinals will be announced via e-mail following the last scheduled Quarterfinal argument. For the Semifinals, decisions and the final round competitors will be announced via email following the last scheduled Semifinal argument. For the finals, the judges will retire after the conclusion of argument, and then return to announce the winner of the McBaine competition. All award winners will be announced at this time and prizes will be handed out.

5. BRIEFS

The following rules are drawn from the rules of the U.S. Supreme Court whenever possible. In many instances, "local" rules have been substituted by necessity.

A. A brief on the merits shall contain in the order here indicated:

(i) The questions presented for review. The questions shall be set out on the first page following the cover, and no other information may appear on that page. The questions need not be set out verbatim according to the Record. The brief may not raise additional questions not resolved by the decision of the appellate court.

- (ii) A table of contents and table of cited authorities.
- (iii) A concise statement of the case, setting out the facts material to the consideration of the questions presented, with appropriate references to the record (e.g., “TR 39”).
- (iv) A summary of the argument, suitably paragraphed. The summary should be a clear and concise condensation of the argument made in the body of the brief; mere repetition of the headings under which the argument is arranged is not sufficient.
- (v) The argument, exhibiting clearly the points of fact and of law presented and citing the authorities and statutes relied on.
- (vi) A conclusion, specifying with particularity the relief the party seeks.
- (vii) An appendix may be included that contains the text of pertinent statutory authority.
- (viii) A reference to the record set out in any brief shall indicate the appropriate page number. (e.g., “App. 183”).
- (ix) References to cited legal authority shall conform to Bluebook standards.
- (x) A brief shall be concise, logically arranged with proper headings, and free of irrelevant, immaterial, or scandalous matter.

B. Every document shall bear on its cover, in the order indicated, from the top of the page:

- (i) the docket number of the case
- (ii) the name of this Court
- (iii) the caption of the case
- (iv) the nature of the proceeding and the name of the court from which the action is brought (e.g. for a merits brief, “On Writ of Certiorari to the United States Court of Appeals for the Xnth Circuit.”)
- (v) the title of the document (e.g. “Brief for the Petitioner” or “Brief for Respondent”)
- (vi) the name and address [e-mail address is sufficient] of the attorney who is counsel of record for the party concerned.

A sample cover shall be distributed to competitors far in advance of the brief’s due date.

C. The body of every document shall bear at its close the name and signature of counsel of record. By signing the brief on the merits, the attorney of record affirms that he or she has complied with the Boalt Hall Honor Code and with all provisions of this document.

D. Final Brief Format

- (i) Reproduction:
 - a. A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.
 - b. Text must be reproduced with a clarity that equals or exceeds the output of a laser printer.
- (ii) Cover: The cover of the petitioner's brief must be blue; the respondent's must be red.
- (iii) Binding: The brief must be bound on the left margin. Staple binding is acceptable.
- (iv) Paper Size, Line Spacing, and Margins: The brief must be on 8 ½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.
- (v) Typeface: “Century” twelve-point type must be used. Any footnotes shall also conform to

this requirement.

(vi) Type Styles: A brief must be set in a plain style, although italics or boldface may be used for emphasis. Case names must be italicized or underlined.

(vii) Length: A principal brief must be between 25 and 40 pages. Only the substantive brief counts toward the page limit (i.e., the statement of the case, summary of the argument, the argument itself, and conclusion). This excludes the question presented, table of contents and table of authorities, which should be paginated with small Roman numerals (i, ii, iii, iv, etc.). This also excludes the appendix pages, which should be numbered with an "A-" preceding each numbered page (A-1, A-2, etc).

E. Minimum Standards – We believe that every student has the talent and resources necessary to write a persuasive and legally sound brief. If, however, you submit a substandard brief, you will not be awarded academic credit. A substandard brief is one that fails to address major cases and statutes referenced in the lower court opinions and the record.

F. Brief Deadline and Late Briefs

(i) Seven hard copies of each competitor's brief are due on Monday , February 8, 2010 at 12:00 p.m. Copies shall be turned in at 375 Boalt Hall. Electronic copies of the brief shall also be e-mailed by 12:00 p.m. that same day to wfernholz@law.berkeley.edu AND mcbaine.competition@gmail.com.

(ii) Late Briefs – Two points from the brief score will be deducted for every half-hour (rounding up) the brief is late, either in hard copy form or via e-mail. Given that the competition is tight, a late brief will most likely prevent a competitor from advancing to the elimination rounds. Briefs will not be accepted after 5:00 p.m. on February 8, 2010. Failure to turn in a brief will also result in an NC grade.

G. All requests for clarification, rescission, or additions to these rules must be presented in writing to Bill Fernholz (wfernholz@law.berkeley.edu) and the Competition Directors (mcbaine.competition@gmail.com).

6. ORAL ARGUMENT

(a) Preliminary Rounds, Quarterfinal Rounds, Semifinal Rounds. Each student will have 20 minutes to present oral argument. The petitioner shall present first, followed by the respondent, and finally the petitioner's rebuttal. The petitioner may reserve up to three minutes of his or her time for rebuttal, but must notify both the timekeeper and judges prior to commencing argument. Rebuttal should directly address the points that respondent raises.

(b) Final Round. Each finalist will have 30 minutes to present oral argument. The petitioner may reserve up to five minutes of his or her time for rebuttal. Rebuttal should directly address the points that the respondent raises.

(c) Conflicts. Any competitor who believes that a judge on her or his panel may have a conflict of interest in judging her or him shall inform Bill Fernholz immediately (wfernholz@law.berkeley.edu)