

2011-2012 MCBAIN COMPETITION RULES

HONOR CODE

Any attempt, direct or indirect, to contact the attorneys or the parties, or to examine the case file (other than the materials provided) or briefs in this case or any part of any case or brief in which any of the parties raised substantially the same claim(s) as in this year's case is prohibited. If you are assigned any reading or have class discussion related to the case, please contact Bill Fernholz (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. You may *not* solicit or receive help in preparing your brief, in any form, from faculty members, attorneys, or anyone else inside or outside Berkeley Law except for Bill Fernholz and the McBaine Competition Directors. You may also have one person who is not a lawyer or McBaine competitor proofread your brief for grammar, spelling, and punctuation only. In discussing the substantive aspects of the case, you may consult only with the Competition Directors and Bill Fernholz. Except as described here, you may not cooperate or collaborate with any other person in preparing your brief.

Oral Argument – You may consult only with the Competition Directors and Bill Fernholz when preparing your oral argument. You may practice your argument with anyone except other McBaine competitors, Board of Advocates officers, or lawyers. This person may not “moot” you – that is, she or he may not interrupt to ask you questions during practice. This person 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 the 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 you to add or drop McBaine Moot Court after you have submitted your side preference sheet. This rule is necessary because scheduling of competitors, rooms, and judges depends on a fixed count of participating 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 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 a single batch. You can download your side preference sheet on the McBaine website. Please e-mail your Side Preference Sheet to the Directors at McBaine.Competition@gmail.com no later than 12:00 p.m. (noon) on Monday, December 19, 2011. If you fail to submit your side preference sheet by that date and time, you may be dropped from the competition and replaced by a student on the waitlist. If you have no side preference, mark “No Preference.” In addition to indicating your side preference, you must also indicate your agreement to abide by the Rules.

Side assignments will be released as soon after the deadline for submission of side preference sheets as possible. The announcement will come via e-mail to all competitors who submitted a side preference sheet.

Once the Directors have assigned you a side, you may begin preparing your brief.

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. That is, you may not consult or cite to any briefs in this year’s case or any part of any cases or briefs in which any of the parties have raised substantially the same claim(s) as in this year’s case—those cases include but are not limited to the cases listed on the “Forbidden Cases” link on the Competition Website (if any) and provisions (B) and (C) in this section. Case law and statutory authority may be cited from any date, even after the filing of the decision in the Second Circuit.
- 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 Second Circuit 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 August 13, 2010.
- 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 August 13, 2010.
- 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 shortly.

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:

- Best Oral Argument given to the winner of the McBaine competition final round;
- Finalist/Runner-Up given to the other finalist;
- Best Petitioner Brief; and
- 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 practicing attorneys, primarily Boalt alumni who previously competed in the McBaine Competition. The brief graders are not the same judges as the judges you will have during oral arguments. 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.

- 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, including 9th Circuit Judge Marsha S. Berzon.
- 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 e-mail 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 (i.e., “R. at [page]”).
- iv. A summary of the argument, suitably paraphrased. 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. References to cited legal authority shall conform to Bluebook standards.
- ix. 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 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.
 - 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. 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.
- iv. Typeface: "Century" twelve-point type must be used. Any footnotes shall also conform to this requirement.
- v. 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.
- vi. 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 Wednesday, February 15, 2012 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 Wednesday, February 15, 2012. 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).