

# MCBAIN MOOT COURT

## 2021 COMPETITION RULES

### I. HONOR CODE

By participating in this exercise, students express their agreement to abide by the rules described below. A violation of any of McBaine Moot Court rule also shall be treated as a violation of the Berkeley Law 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 the McBaine student directors ([mcbainecomp@law.berkeley.edu](mailto:mcbainecomp@law.berkeley.edu)) and Liz Garfinkle ([lizgarfinkle@berkeley.edu](mailto:lizgarfinkle@berkeley.edu)) immediately.

### II. OUTSIDE HELP

During the spring semester, the Student Directors and McBaine Academic Director Liz Garfinkle will host two information sessions to address brief-writing and oral advocacy, respectively. Participants are encouraged to attend, but attendance is entirely optional and will not affect competitors' scores or standing.

Aside from these sessions, you may only receive limited assistance in writing the brief or preparing oral argument, as described below:

- A. **Brief** - The brief should be entirely your work. You may not solicit or receive help in any form from law school faculty members, attorneys, or any other person except for the Student Directors, McBaine Academic Director Liz Garfinkle, and Advocacy Competitions Director Natalie Winters (collectively "Directors"). The Directors will provide limited feedback on drafts submitted by Monday, February 8.

You may also have one person who is not a lawyer or current 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 Directors. Except as described here, you may not cooperate or collaborate with any other person in preparing your brief.

- B. **Oral Argument** - You may practice your argument with anyone *except* current McBaine competitors, law professors, or lawyers when preparing your oral argument. The Competition offers formal mooting sessions in order to ensure that you have multiple opportunities to practice your argument. If you feel you need

more moots than you have volunteers to moot you, please contact the Student Directors to arrange additional moots. 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.

### III. NO LATE DROPS

If you decide not to compete after having been offered a place in McBaine, please inform the Competition Directors as soon as possible. **In any case, we will not allow students to drop McBaine after Friday, January 22 (when sides are assigned).** McBaine depends on careful coordination of judges, competitors, facilities, and both individual and institutional schedules -- an enormous undertaking. Working with a fixed count of participants is crucial to the program's success.

### IV. ELIGIBILITY

All second- and third-year J.D. students and Traditional- and Thesis-Track LL.M. 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 welcome to consult with the Directors before applying, but are not required to do so. Students are officially deemed competitors upon enrollment in the course and submission of the side preference sheet.

### V. SIDE PREFERENCES

You must submit your Side Preference and Commitment form (available on the McBaine website) no later than 11:59 p.m. on **Wednesday, January 20**. You may either indicate a preference to represent one side of the case (Petitioner or Respondent) or indicate that you have no preference. Additionally, you will be also indicate your agreement to abide by the Rules.

If you fail to submit your Side Preference and Commitment form by the deadline and do not notify the organizers that you still wish to compete, you may be dropped from the competition and replaced by a student on the waitlist.

As soon after the Side Preference deadline as possible, sides will be announced via e-mail to all competitors who submitted the form.

## VI. LEGAL RESEARCH

- A. **Open Universe with Restrictions** - Competitors 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 McBaine Honor Code (See Rule I, above).
- B. **Affirmative Duty to Report Potentially Related Materials** - You have an affirmative duty to ask immediately about any questionable material. Please send any such questions to the Competition Directors. You will receive an answer shortly.

## VII. SCORING, AWARDS, & 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 Final Round winner;
  - Oral Argument Finalist, given to the other Final Round competitor;
  - Best Petitioner Brief, given to the author of the strongest brief for Petitioner; &
  - Best Respondent Brief, given to the author of the strongest brief for Respondent.

Sample scoring sheets will be available on the Competition website. These scoring sheets list the criteria 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. Oral argument judges will be given copies of the students' briefs before the competition so they will be familiar with their arguments, but will not be responsible for scoring the briefs. They may provide comments on the brief during oral argument feedback. **The completed oral argument scoring sheets are confidential and will not be released to the students.**

Briefs will be graded by practicing attorneys, primarily Berkeley Law alumni who previously competed in the McBaine Competition or other advocacy competitions. The brief graders are not the same judges as the judges presiding over oral arguments. Each brief will have no fewer than two graders. 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. The brief judges may also provide written comments, and comment sheets will be returned to the students after the oral argument. **The completed brief scoring sheets are confidential and will not be released to the students.**

Although a student may not advance to later rounds of oral argument, they may still win a Best Brief award based solely on the quality of the written brief. A separate panel of appellate specialists and/or faculty members will review the three highest-scoring briefs from each side, and this independent review of the top briefs will determine the recipients of the Best Brief awards.

**B. Advancement, Preliminary Rounds** - During the preliminary rounds, all competitors will argue twice before judge panels comprising experienced alumni, appellate practitioners and faculty members – once during Round 1, and again the following week during Round 2.

Students advance to the elimination rounds based upon the combined strength of their written brief and their oral argument. With brief score and oral argument score given equal weight, the four highest-scoring competitors from each side will advance to the first of the elimination rounds, the Quarterfinal.

**C. Advancement, Elimination Rounds** - During the Quarterfinal and Semifinal rounds, students advance to the next round based *solely* on the quality of the oral argument. The two highest-scoring quarterfinalists from each side will advance to the Semifinal, which will be judged by Berkeley Law professors, judges, and distinguished legal practitioners. The highest-scoring Petitioner and Respondent will then advance to the Final round, where a panel of three esteemed judges will preside.

Quarterfinal results and Semifinal pairings will be announced via e-mail following the last scheduled Quarterfinal argument. The two Final Round competitors will be announced via e-mail following the last scheduled Semifinal argument. At the conclusion of Final Round arguments, the judges will retire to deliberate, then return to announce the winner of the McBaine Competition. All awards will be announced and prizes will be presented at this time.

## VIII. BRIEFS

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

### A. Substantive requirements

- i. A brief on the merits shall contain, in the order here indicated:
  - a. 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.
  - b. A table of contents and table of cited authorities.
  - c. 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]”).
  - d. 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.

- e. The argument, exhibiting clearly the points of fact and of law presented and citing the authorities and statutes relied on.
  - f. A conclusion, specifying with particularity the relief the party seeks.
  - g. An appendix may be included that contains the text of pertinent statutory authority.
  - h. References to cited legal authority shall conform to Bluebook standards.
  - i. A brief shall be concise, logically arranged with proper headings, and free of irrelevant, immaterial, or scandalous matter.
- ii. Every document shall bear on its cover, in the order indicated, from the top of the page:
- a. The docket number of the case
  - b. The name of this Court
  - c. The caption of the case
  - d. 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 Xth Circuit.")
  - e. The title of the document (e.g. "Brief for the Petitioner" or "Brief for Respondent")
  - f. The name and address [e-mail address is sufficient] of the attorney who is counsel of record for the party concerned.

*Note: A sample cover shall be distributed to competitors far in advance of the brief's due date.*

- iii. 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 Berkeley Law Honor Code and with all provisions of this document.

## B. Formal Requirements

- i. Page Size, Line Spacing, and Margins - The brief must be on 8 ½ by 11 inch page. 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.
- ii. Typeface - Twelve-point type in a common and readable typeface (such as Times New Roman or Century) must be used. Any footnotes shall also conform to this requirement.
- iii. 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.

- iv. 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).
- C. **Minimum Standards** - We firmly believe that every McBaine participant has the talent and resources necessary to write a persuasive and legally sound brief that far exceeds the minimum standard for credit in this exercise. A brief which fails to address major cases and statutes referenced in the lower court opinions and the record will be considered *substandard* and will result in a No Credit grade.
- D. **Brief Deadline and Late Briefs**
- i. Electronic copies of your final brief (in PDF form) must be e-mailed to BOTH *lizgarfinkle@berkeley.edu* AND *bkarvelot@law.berkeley.edu* by 12:00 p.m. (noon) on **Monday, February 22**.
  - ii. Hard copies of briefs may be required in addition to electronic copies, if the Competition Directors provide advance written notice. In such a case, the Directors would provide competitors with the supplemental formal requirements that would apply to hard copies.
  - iii. **Late Briefs** - For each and every half-hour (with any fraction thereof rounded up) that a brief is late, either in hard copy or electronic form, two points will be deducted from the brief score. Given that 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 24. Failure to successfully submit a brief will result in an NC grade.
- E. All requests for clarification, rescission, or additions to these rules must be presented in writing to Liz Garfinkle (*lizgarfinkle@berkeley.edu*) and the Competition Directors.

## IX. ORAL ARGUMENT

- A. **Preliminary Rounds, Quarterfinal Rounds, Semifinal Rounds** - Each student will have 20 minutes to present oral argument. Petitioner shall present first, followed by Respondent, followed by Petitioner's rebuttal. Petitioner may reserve up to three minutes of their time for rebuttal but must notify both the timekeeper and the 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 Academic Director Liz Garfinkle immediately (*lizgarfinkle@berkeley.edu*).
- D. All rounds for 2021 will be held virtually via Zoom.

## X. UPDATES

- A. **Updates** – Dates for the final round are still being finalized, and may affect deadlines for side preferences and brief submission. The calendar should be finalized before side preferences and class commitments are due. Competitors will be given advanced notice, in writing, of any changes to the rules or updates to the competition schedule.
- B. **Changes** - Changes to stay-at-home orders and other COVID-19-related concerns should not affect the administration of this competition, but the Directors reserve the right to make changes to the competition, including scheduling and deadlines, to accommodate ongoing coronavirus concerns.