

**2009–2010 SHERMAN MINTON  
MOOT COURT COMPETITION**

**Indiana University  
Maurer School of Law**

**Fall Competition Instructions and Rules**

## FALL 2009 COMPETITION SCHEDULE

Teams and Sides Available	Friday, Sept. 11
Competition Problem & Rules Available	Friday, Sept. 11
Brief Numbers Available in Moot Court Office	Tuesday, Sept. 15 12-1 p.m.
Signup for Argument Times in Moot Court Office	Monday, Sept. 21, 8 a.m. – 5 p.m.
Briefs Due	Monday, Oct. 5 at NOON
Oral Arguments, Round 1	Friday, Oct. 9-Thursdays, Oct. 15 <sup>1</sup>
Oral Arguments, Round 2	Monday, Oct. 26-Saturday, Oct. 31
Oral Arguments, Round 3	Monday, Nov. 2-Monday, Nov. 9 <sup>1,2</sup>
Octofinalists and Honors Posted	Saturday, Nov. 21
Graded Briefs Available	Monday, Nov. 23 12-1 p.m.

<sup>1</sup> Oral arguments will not be held on Sundays.

<sup>2</sup> No oral arguments will be held on Saturday, November 7.

### NONDISCRIMINATION POLICY

The Sherman Minton Moot Court Board and Competition fully support the policies of Indiana University and the Law School, set forth in the Code of Student Rights, Responsibilities and Conduct (<http://www.iu.edu/~code/code/index.shtml>) and elsewhere, prohibiting bias or discrimination on the basis of gender or gender identity, sexual orientation, marital status, veteran status, religion, disability, age, race, color, socioeconomic status, ethnicity, or national or regional origin. Competitors who encounter such discrimination in the course of the Competition are encouraged to report it to the Executive Competition Coordinators, Professor Lahn, or Dean Fromm.

### ELIGIBILITY AND ENTRY

The Sherman Minton Moot Court Competition is open to all second-year law students, third-year joint degree students who have not previously participated in the Competition, and third-year students who were unable to participate in their second year because of a semester abroad. There are no course prerequisites for participation in the Competition.

The Sherman Minton Moot Court Competition is a two-semester event. By entering the Competition, each Competitor is pledging to participate in Spring Rounds if she or he advances. **If there is any reason that you may not be available to participate in Spring Rounds, you must immediately e-mail [lawmoot@indiana.edu](mailto:lawmoot@indiana.edu) upon receiving these Instructions.**

### TEAMS AND SCORING

Participants will compete in teams of two (with the exception any groups of three specially designated by the Board to round out team numbers). Each team will be assigned to either Appellant's or the Appellees' side, and will collectively write a single brief. Each Competitor will participate in oral arguments individually.

Each team will determine for itself how to divide the work of writing the brief. Team members are free to collaborate on the entire brief or split the work of drafting the arguments on major issues between themselves. Your own team members are the only people with whom you may discuss the Problem during the brief-writing portion of the competition. **Each team will receive a single, combined brief score.**

Once the briefs are submitted, you may continue to work **only** with your teammate in preparing for Oral Arguments. You and your teammate may discuss the problem and arguments, and may conduct practice arguments during the entire course of the Moot Court Competition.

At oral argument, Competitors will compete individually. They must be prepared to argue the entire case and to respond to questions on any issues raised by the entire Problem. Competitors will receive individual scores based on each oral argument. Whether or not a given Competitor advances to the Spring Rounds will be based on that Competitor's combined fall brief and oral argument scores.

## **FORM & CONTENTS OF BRIEFS**

**Precedent:** Each team will prepare a brief to the (fictitious) United States Court of Appeals for the Fourteenth Circuit, which includes the (equally fictitious) Southern District of Absaroka.<sup>1</sup> Competitors should assume that there is no precedent within the Fourteenth Circuit on any substantive issue, but that the Fourteenth Circuit, like other federal courts, is subject to the authority of the United States Supreme Court and often finds authority from other judicial circuits, districts, and states to be persuasive. Seventh Circuit case law applies to any procedural questions (see below).

**Rules:** The United States Court of Appeals for the Fourteenth Circuit has adopted the Circuit Rules of the United States Court of Appeals for the Seventh Circuit and the Seventh Circuit's case law applying the Federal and Circuit Rules. The form and contents of all briefs are governed by the Federal Rules of Appellate Procedure, particularly Rules 28 and 32, and the Rules of the Seventh Circuit, except where departures from those rules are specifically noted below. These rules may be found at <http://www.ca7.uscourts.gov/>. Nothing in the Brief Examples on the Seventh Circuit web site supersedes the specific instructions contained herein. Competitors should base the form and contents of their briefs on the Federal and Circuit Rules and these instructions.

**Citation Format & Grammar:** All citations within briefs shall be in accordance with the Eighteenth Edition of *The Bluebook: A Uniform System of Citation* (2005). Competitors may not rely on citation forms contained in the Problem or in any sample brief supplied by the Moot Court Board.

Any grammatical or style issues not covered by *The Bluebook* will be governed by the Fifteenth Edition of *The Chicago Manual of Style* (2003).

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<sup>1</sup> Pronounced "Ab-ZOR-ka."

**Contents:** Each team will be responsible for addressing the major issues and all other required portions of the brief. Team members must decide between themselves whether they will draft the brief collectively or whether they will split up the drafting of any sections of the brief. Within the broad issue set out by the Problem, the parties may base their arguments on any grounds supported by the record. Competitors may argue for and against alternate grounds for affirmance that are supported by the record in addition to the specific grounds on which the district court ruled. The record on this appeal consists of the facts cited in the Memorandum Opinion and Order Denying Motion for Preliminary Injunction.

**Research:** Competitors may utilize any written or electronic source customarily used in legal research, including the Brief Examples on the Seventh Circuit’s web site as examples of brief formatting. **However, Competitors may not consult any other previously written briefs, moot court problems, or memoranda of law—whether prepared for actual cases or for other law school purposes—that address in any way the substantive issues raised by this year’s Problem or issues related thereto.** The Board may, in its sole discretion, treat a violation of this rule as a violation of Academic Honesty and grounds for disqualification from the Competition.

The Problem identifies certain cases and other authorities pertinent to the issues. These authorities, while not exhaustive, may be a useful starting point for Competitors’ research. Additional research is not required, but is recommended as further research and careful reading of key authorities may aid the Competitors’ understanding of the issues and the quality of advocacy.

## **DEPARTURES FROM FEDERAL AND SEVENTH CIRCUIT RULES**

The following are departures from the rules for form and contents of briefs set forth in the Federal Rules. These exceptions should be followed over any conflicting rules from the Seventh Circuit. Failure to comply with these exceptions will result in point deductions from your total brief score.

- 1. Appellant’s v. Appellees’ Briefs:** BOTH the Appellant’s AND the Appellees’ briefs must contain each of the sections specified by Fed. R. App. P. 28(a) for appellants’ briefs (except as specifically noted below).
- 2. Length of Brief:** The length limitation in Fed. R. App. P. 32(a)(7)(A) applies. Thus, the briefs may not exceed thirty (30) pages. This is a maximum, and briefs need not necessarily reach the 30-page limit to effectively address the issues. However, they should be thorough in addressing the issues. The alternate “word-count certification” method of calculating the length of briefs set forth in Fed. R. App. P. 32(A)(7)(B)(i) and (C) **may not** be used.
- 3. Record Citations:** The district court’s memorandum opinion serves as the record in this case. Therefore, a citation to page six of the record within a brief should be in the following form: (R. 6.) or (R. 6), depending on the placement of the citation in the sentence.

4. **Typeface:** Briefs must be typed in 12-point Times New Roman font, except footnotes, which may be in 11-point font. Text, except for captions, headings, indented quotes, and signature blocks, must be double-spaced and aligned to the left.

5. **Cover Page:** The cover page of each copy of the Appellant's brief must be blue; the cover for each copy of the Appellees' brief must be red. An anonymous and fictitious law firm, address, and phone number must be supplied. Competitors must not use their real names or any other information that might identify the competitors and compromise the anonymity of brief grading. Below each signature block, please indicate your team's brief number. Your brief must not contain your name or any identifying details other than brief numbers.

6. **Corporate Disclosure Statements and Certificates of Service:** Briefs should not include a Corporate Disclosure Statement or Certificate of Service.

7. **Appendices:** The parties are not required or encouraged to file or include any short appendix or other appendix with or in their briefs.

8. **Unpublished Opinions:** Unpublished decisions and slip opinions may be cited in briefs, subject to any restrictions on the use of those opinions imposed by the issuing court. Such decisions need not be appended to briefs, provided that the decisions are available electronically at the website cited in the brief (such as Westlaw or LexisNexis or a publicly accessible court web site).

9. **Copies:** Each team shall file ten (10) spiral- or comb-bound copies of the final brief in the Moot Court Office by **12:00 NOON on Monday, October 5, 2009**. Phi Alpha Delta will be offering brief binding as a convenient option for competitors. More details about this service will be forwarded to all Competitors as soon as they are available.

Late briefs will be penalized two (2) points for each half hour late. Exceptions will be made only under extreme circumstances and with Dean Fromm's approval. Points will be deducted for lateness as follows: two (2) points deducted if 1–30 minutes late; four (4) points deducted if 31–60 minutes late; six (6) points deducted if 61–90 minutes late; and so forth.

## **ACADEMIC HONESTY**

The Law School's plagiarism policy and other Standards of Conduct apply to all aspects of the Competition, including the brief-writing process. You may view the relevant policies online at [http://www.law.indiana.edu/instruction/lrw/common/student\\_conduct\\_2009.pdf](http://www.law.indiana.edu/instruction/lrw/common/student_conduct_2009.pdf). Any ideas or words not of the Competitor's own invention must be properly attributed and cited.

**Competitors are further prohibited from seeking assistance from anyone or discussing the Problem or rules with anyone other than their teammate or designated members of the Executive Board, apart from any in-class discussions of the Problem during the Appellate Advocacy class that are explicitly sanctioned by Professor Lahn. This prohibition includes, but is not limited to, receiving research assistance from WestLaw or LexisNexis representatives and having a non-teammate edit their brief, even if the edits are only**

**grammatical. Again, competitors may only discuss arguments and conduct practice arguments with their teammate.**

Once a Competitor examines the Problem, the Competitor may not allow anyone other than his or her teammate to look at the Competitor's written work or to give the Competitor advice about either the contents or form of that work. This prohibition extends to drafts in any stage of completion. **Violations of this rule will be grounds for disqualification from the Competition and other sanctions by the Law School and the University.**

## **FALL ORAL ARGUMENTS**

Each team member shall be allotted 15 minutes per oral argument. Counsel for Appellant will argue first, followed by counsel for Appellees. Counsel for Appellant may reserve up to 5 minutes for rebuttal. Rebuttal time is deducted from the 15-minute allotment. Counsel for Appellant who elect to do a rebuttal must inform the Bailiff before the argument whether and how much time should be reserved. **NOTE:** Many judges expect counsel for Appellant to additionally request rebuttal time from the panel before beginning their argument.

The Competition will have three preliminary oral argument rounds, requiring all Competitors to argue three times. During the first argument, Competitors will argue "on brief" (i.e., on behalf of the clients represented in that Competitor's brief). During the second round, Competitors will argue "off brief" (the opposite side from that argued in the Competitor's brief). In the third round, a coin flip will determine whether the Competitor will argue on brief or off brief. Teammates will not argue against each other in the third round. Results of the coin flip will be posted twenty-four hours prior to your third argument on the board outside the Moot Court Office.

Competitors should be prepared to answer questions from judges concerning any issues in the Problem. **Competitors may not attend a fall oral argument in which they are not arguing.**

On September 21st, from 8 a.m. until 5 p.m., Competitors will be able to sign up in person in the Moot Court office for all three of their arguments times. Argument times will be assigned on a first-come, first-served, basis. Competitors will be allowed to reserve a time not only for their own arguments, but also for their teammate's arguments. In other words, each teammate may reserve their own oral argument times, but one person per team may reserve argument times for both teammates. **Should your team choose to have one teammate sign up both partners, please communicate clearly with your teammate; once a team members signs you up, you will be locked into that time, even if you come in to sign up on your own at a later time. Under no circumstances will competitors be allowed to reserve argument times for anyone other than their teammates.**

Competitors who do not sign up for argument times within the designated time will be randomly assigned argument times by the Executive Board. In the event that a Competitor has a conflict with one of their argument times, regardless of whether the Competitor (or their teammate) signed up for an argument in person or was randomly assigned an argument time, it is the Competitor's sole responsibility to find another Competitor, who is arguing the same side that

round, with whom to switch argument times (e.g., an Appellant for Round Two may only switch with a Competitor who is also an Appellant in Round Two). **Due to the number of Competitors and the fact that Competitors are able to select their own argument times if they so choose, the Executive Board will not entertain requests to reschedule arguments.** Competitors are encouraged to sign up early for argument times so to avoid having to reschedule their argument time.

## DRESS ADVISORY

Your appearance and conduct during oral arguments are evidence of your respect for the judges, other competitors, and the Sherman Minton Moot Court Competition. As a general rule, “[a]ppropriate attire for counsel is conservative business dress in traditional dark colors.” Clerk of the Court, Supreme Court of the United States, Guide for Counsel 3 (2008), [http://www.supremecourtus.gov/oral\\_arguments/guideforcounsel.pdf](http://www.supremecourtus.gov/oral_arguments/guideforcounsel.pdf).

## QUESTIONS

Competitors may seek clarification of these Instructions only by sending the questions to the [lawmoot@indiana.edu](mailto:lawmoot@indiana.edu) email account. The Board will decide in its sole discretion whether an answer is necessary or appropriate. If so, the answer will be posted on the bulletin board next to the Moot Court office within two work days and on the Competitors' web page as soon as practicable, so that all Competitors have access to the answer. Additionally, the Board may, at its discretion, email some answers to all competitors.

## ADVANCING IN THE COMPETITION

Thirty-two Competitors will advance to the spring Octofinals. The Octofinalists are selected by calculating the highest total individual scores among the Competitors. Total scores for each competitor are calculated based on a Competitor's brief scores (45 percent) and on the Competitor's oral argument scores (55 percent). Briefs are scored solely by the student Problem Supervisors; no one other than the Problem Supervisors and the Executive Board will have access to student briefs and brief scores or play any role in the grading process. Judges do not see individual student briefs.

Our oral argument judges, who may be alumni, other attorneys, actual judges, faculty members, or student Board members, individually determine oral argument scores for each Competitor. All scores are then entered into a computer program that normalizes them to ensure fairness and accuracy.

Again, the Sherman Minton Moot Court Competition is a two-semester event. By entering the Competition, each Competitor is agreeing to participate in Spring Rounds if she or he advances. If you believe that there is any reason that you may not be available to participate in Spring Rounds, you must immediately e-mail [lawmoot@indiana.edu](mailto:lawmoot@indiana.edu).

A Spring Problem will be distributed to Octofinalists in December or January, with a brief due from each Octofinalist in 20-30 days. Briefing and oral arguments for the Spring Rounds may or

may not involve the same issues as those used for Fall Rounds. A new set of rules will govern the Spring Rounds.

### **2010–2011 MOOT COURT BOARD SELECTION**

The selection process for the 2010-2011 Sherman Minton Moot Court Board will be announced shortly after the Finals, which will take place in late February. Board selections will be announced at the Awards Banquet in the spring semester.

**Good luck to all Competitors!**