



**SHERMAN MINTON MOOT
COURT COMPETITION**

MAURER SCHOOL OF LAW
BLOOMINGTON

The 54th Annual
**SHERMAN MINTON MOOT
COURT COMPETITION**

2019

COMPETITION INSTRUCTIONS AND RULES

2019 COMPETITION SCHEDULE

Competition Rules Released	Friday, Sept. 6
Sherman Minton Problem Released	Saturday, Sept. 14
Moot Court Research Session	Wednesday, Sept. 25, 12:00 – 1:00 p.m. (Moot Court Room)
Dates for Oral Argument Signups (Rounds 1 and 2)	Thursday, Oct. 3, 7:30 a.m. – Friday, Oct. 4, 11:59 p.m.
Briefs Due Electronically (via Canvas)	Monday, Oct. 7 by 11:59 p.m.
Briefs Due in <u>Bound</u> Hard Copy	Wednesday, Oct. 9 by 12:00 p.m.
Oral Arguments, Round 1	Wednesday, Oct. 23 – Saturday, Oct. 26
Oral Arguments, Round 2	Tuesday, Oct. 29 – Wednesday, Oct. 30; Friday, Nov. 1 – Saturday, Nov. 2
Results Announced (Rounds 1 and 2)	Saturday, Nov. 2
Round of 64	Tuesday, Nov. 5 – Wednesday, Nov. 6
Octofinals	Wednesday, Nov. 13 – Thursday, Nov. 14
Quarterfinals	Saturday, Nov. 16
Semifinals	Tuesday, Nov. 19
Finals	Friday, Nov. 22

Inclusion and Diversity Policy

The Sherman Minton Competition and Advocacy Board enthusiastically welcome the participation of every eligible member of our community. Indiana University and the Law School have established policies (<http://www.iu.edu/~code/code/index.shtml>) 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. The Sherman Minton Moot Court Competition ("SMMCC") fully supports the values of inclusiveness and diversity embodied by those policies, which are also expressed in Indiana Rule of Professional Conduct 8.4(g), which provides that it is misconduct for an attorney, in a professional capacity, to manifest, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, sexual orientation, age, socioeconomic status, or similar factors.

Please do not hesitate to tell us if you have any physical or cognitive condition or limitation, whether temporary or of longer duration, or any pronoun or similar preferences that could be accommodated to ensure your full participation in the SMMCC.

We encourage any student who believes that their participation in the SMMCC has been or may be limited or adversely affected on account of any status, condition, or other proscribed factor to inform Prof. Lahn; Director Beck; or Dean Orenstein immediately.

Eligibility and Entry

The SMMCC is open to (a) all 2L students at the Law School;
(b) 3L students whose study abroad during

the fall of second year precluded their participation in the SMMCC as a 2L; and (c) visiting or exchange students, with the permission of the Sherman Minton Executive Advocacy Board ("Board" or "Executive Board") or Dean Orenstein. For purposes of this policy, joint-degree students are considered to be 2L students during the second academic year in which they enroll in any course at the Law School, provided that they have completed their first year. Joint-degree students must, if they wish to participate in the SMMCC, compete in that second year.

Commitment to Compete

Each participant must sign and abide by the Sherman Minton Moot Court Competitor Commitment Agreement ("Agreement"), available on the SMMCC Canvas page, and upload a signed copy of the Agreement to the SMMCC Canvas page by 11:59 p.m. on Sept. 13, 2019. By signing the Agreement, each competitor promises to participate in good faith in each aspect of the SMMCC, including the brief-writing portion; the two initial rounds of oral argument; and each subsequent tournament round to which they advance, up to and including the SMMCC Finals. The Agreement further memorializes each competitor's promise to attend and complete each Round of argument.

In addition, if a competitor fails to submit a brief in good faith; fails to appear for or participate in good faith in a scheduled or rescheduled oral argument; or otherwise violates these Rules, that competitor will forfeit their standing in the SMMCC; will have any advancement and/or honors retroactively vacated; will be ineligible to advance further, and will be ineligible for both Brief-Writing and Oral Advocacy Honors.

The Board may treat a violation of any of these Rules, including, without limitation, the specified restrictions on research and collaboration (see “Research and Collaboration,” *infra*) as grounds for disqualification from the SMMCC. The Board may also report any violation of these Rules to Dean Orenstein as academic misconduct.

Academic Honesty

Maurer School of Law’s Academic Regulations, including without limitation its plagiarism policy and other Standards of Conduct for Students¹, apply to all aspects of the SMMCC, including the brief-writing process. Competitors are encouraged to review the relevant policies. Competitors must properly attribute and cite any ideas or words not of their own origination.

Prohibition on Gambling

The Law School prohibits making wagers or bets, whether for money or otherwise, on the outcome of or student performance in any sanctioned curricular, extra-curricular, or co-curricular program, including, without limitation, the SMMCC. Such conduct is a violation of both academic and professional standards. Any competitor found engaging in or facilitating gambling will be disqualified from advancing and/or receiving honors in the SMMCC. The Board will also report to Dean Orenstein any reports it receives of such conduct by law students, whether competitors or non-competitors.

Reporting Misconduct

Any competitor who believes that a another competitor, a judge, a Board member, or any other affiliate of the SMMCC has violated these Rules or otherwise compromised the fairness and/or integrity of the SMMCC may report

the misconduct to any member of the Board, to Prof. Lahn, Director Beck, and/or Dean Orenstein. The Board will honor requests for confidentiality except as mandated by applicable federal or Indiana University regulations or the Law School’s Academic Regulations, or as necessary to mitigate or prevent harm and/or unfair prejudice to competitors.

Questions

Competitors may seek clarification of these Rules or the 2019 SMMCC Problem (“Problem”) only by sending questions to lawmoot@indiana.edu, or at live research sessions sanctioned by the Board (see “Research and Collaboration,” *infra*).

Questions sent to a personal e-mail account of a Board Member or directed personally to a Board Member, outside of officially designated sessions, will not be answered. If the Board provides an answer to a substantive question regarding these Rules or the Problem, the Board will e-mail the question and answer to all competitors.

The Board will not answer questions that would provide unfair guidance on the substance of the Problem or questions that are readily answerable by consulting these Rules. All decisions regarding the appropriateness of questions are in the Board’s sole discretion.

Teams and Scoring

SMMCC competitors will compete in teams of two (with the exception of any other arrangement designated at the discretion of the Board). Each team will be assigned to either the Appellant’s or the Appellee’s side and will collectively write a single brief. Each competitor will participate in oral arguments individually.

¹ [https://www.law.indiana.edu/student-life/student-](https://www.law.indiana.edu/student-life/student-affairs/assets/academic-regulations.pdf)

[affairs/assets/academic-regulations.pdf](https://www.law.indiana.edu/student-life/student-affairs/assets/academic-regulations.pdf)

Team members may collaborate on writing their brief in any way that they wish. However, because each competitor must be prepared to address all issues at oral argument, we advise both partners to collaborate on all major portions of the brief. Each team will receive a single, combined brief score.

At oral argument, competitors will compete individually and must be prepared to respond to any issues raised by the Problem. Competitors will be scored individually on each oral argument. Whether a competitor advances to the tournament rounds will be based on that competitor's combined brief and oral argument scores (see also "Advancing in the Competition," *infra*). While oral argument scores are not released, judges are asked to give competitors written feedback on their performances after each round.

Your partner is the only person with whom you may discuss the Problem throughout all stages of the SMMCC, including brief writing and preparation for both Rounds 1 and 2 and any tournament round to which you may advance. (See also, "Research and Collaboration," *infra*.) The exceptions to the foregoing restriction include: (1) in-class discussions of the Problem in the Appellate Advocacy course (B642) that are specifically authorized by Prof. Lahn, and (2) research sessions conducted by Maurer School of Law librarians as specifically designated by the Board. No questions about the Problem may be directed to members of the Board unless they are presented in an e-mail to lawmoot@indiana.edu. (See also, "Questions," *supra*.)

Advancing In the Competition

Executive and Competition Board
members, excluding Executive

Competition Coordinators ("ECCs"), will grade competitors' briefs. ECCs, who are the only members of the Executive and Competition Board who know which competitors correspond to which brief numbers, will not grade briefs. Oral argument judges, who may be alumni, other practicing attorneys, actual judges, faculty members, or Executive/Competition Board Members, individually determine oral argument scores for each competitor.

A competitor's brief score will account for thirty-five percent (35%) of their total individual score for Rounds 1 and 2, and the aggregated oral argument scores will account for sixty-five percent (65%) of that score. The Board calculates the individual scores for each competitor with the aid of a custom-designed program. The thirty-two (32) overall top competitors who argued "on-brief" for Appellant, and the thirty-two (32) overall top competitors who argued "on-brief" for Appellee, will advance to the tournament rounds, which begin the third week of competition. (See "2019 Competition Schedule," *supra*.) In the tournament rounds, new materials may be added to the Problem and new rules may be added to the SMMCC.

Form and Contents of Briefs

Precedent and Assumptions: Each team will prepare and submit a brief, either in support of or opposition to the Appeal, to the (fictitious) U.S. Court of Appeals for the Fourteenth Circuit, which includes the (equally fictitious) State of Arcadia. Competitors should assume that there is no precedent within the Fourteenth Circuit on any substantive issue except where specifically noted. The Fourteenth Circuit, however, like other federal courts is subject to the authority of the U.S. Supreme Court and may find authority from other judicial circuits, districts, and states to be persuasive.

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; the Seventh Circuit’s case law specifically addressing the Circuit Rules; and the Seventh Circuit’s case law dealing with federal procedural issues, including standards of appellate review.

The form and contents of briefs are governed by the Federal Rules of Appellate Procedure, particularly Rules 28 and 32, and the corresponding Seventh Circuit Rules, except where departures from those the rules are specifically noted below (See “Departures from Federal and Seventh Circuit Rules,” *infra*) or in the Problem materials themselves.

Citation Format and Grammar: All citations within briefs shall be in accordance with the **Twentieth Edition of *The Bluebook: A Uniform System of Citation* (2015)**. Competitors may not rely on citation forms contained in the Problem or in any document supplied by the Board. Any grammatical or style issues not covered by *The Bluebook* are governed by the Seventeenth Edition of *The Chicago Manual of Style* (2017).

Issues: The parties may argue, both in their briefs and at oral argument, any position supported by the record and raised in the trial court, including alternate grounds for affirmance of the trial court, *see generally, e.g., Jennings v. Stephens*, 135 S. Ct. 793 (2015).

The parties may not—under the doctrine of “plain error” or otherwise—raise, on appeal for the first time, an entirely new issue not raised in the proceedings below.

The record on this appeal consists solely of the items included in the Problem, including

information in any court documents, studies, papers, articles, statistics, web sites, or other media or information cited to, footnoted, or hyperlinked in the Problem.

Research and Collaboration: The Problem identifies certain cases and other authorities pertinent to the issues. While these cases will provide a useful starting point, additional research is likely to help competitors craft a strong brief and oral argument.

Competitors may use any written or electronic, generally available resource customarily used for legal research. For purposes of this rule, “generally available resources” include Westlaw, LexisNexis, Bloomberg Law, and other subscription services that are available to all second-year law students. A competitor may not use (1) materials—including problems, briefs, papers, or drafts of articles or notes—that were written for another moot court competition or law school assignment or journal, either within or without the Maurer School of Law, except for prior years’ SMMCC briefs posted on the SMMCC or Appellate Advocacy Canvas sites; or (2) unpublished, privately-written memos, client letters, or similar analyses, including those written by an attorney and not published or made publicly available.

Similarly, no competitor may speak to, or otherwise consult, any person other than that competitor’s partner about any aspect of the Problem, including the brief and oral arguments. This prohibition applies to both oral and written communications and includes, but is not limited to, receiving research assistance from Westlaw or LexisNexis representatives and having any person other than a competitor’s teammate edit that competitor’s brief, even if the edits concern only grammar, usage, punctuation, style, spelling, or citation form.

The sole exceptions to this rule are work with a competitor's partner; questions directed to lawmoot@indiana.edu (see "Questions," *supra*); discussions during Appellate Advocacy (B642) class that are explicitly sanctioned by Prof. Lahn; and any research session by a Maurer law librarian that is specifically sanctioned by the Board in a written communication to competitors.

The Board may treat any violation of the foregoing rules as grounds for disqualification from the SMMCC and may report the violation to Dean Orenstein as a breach of academic honesty. (See *also* "Academic Honesty," *supra*.)

Departures from Federal and Seventh Circuit Rules

The following are departures from the federal and circuit rules. To the extent that the following instructions depart from the federal and circuit rules, these instructions supersede those rules.

Appellant's v. Appellee's Briefs: Both the Appellant's brief and the Appellee's brief must contain each of the sections specified by Fed. R. App. P. 28(a) and Circuit Rule 28(a) for **appellants'** briefs, except as specifically noted below.

Record Citations: The entire Record on appeal is paginated consecutively. Therefore, a citation within a brief to page twenty-three of the record, whether that page falls within the district court opinion or within one of the other documents, should be in the following form: (R. 23.) or (R. 23), depending on the placement of the citation in the sentence.

Cover Page: The brief must not contain the competitors' name or any identifying details other than the assigned brief number because such information may identify competitors and compromise the

anonymity of brief-grading. To this end, competitors must not use an anonymous or fictitious law firm name, address, and/or phone number. Where the format requires the name, law firm, and address of counsel, competitors should enter only their team's brief number. Competitors who violate this rule may be penalized or disqualified.

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

Appendices: The parties are neither encouraged nor required to file or include any appendix.

Length of Brief: Competitors' briefs may not exceed 35 pages. The 35-page limit does not include the front and back covers, the table of authorities, or the table of contents, which are excluded by the relevant Federal Rules of Appellate Procedure. The type-volume (or "word count") method of computing length under Fed. R. App. P. 32(a)(7)(B) may **not** be used.

Unpublished Opinions: Slip opinions, "not-for-publication" opinions, and other unpublished decisions 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).

Submitting Electronic and Paper Copies: Each team must submit its final brief electronically by **11:59 p.m. on Monday, October 7, 2019**. The Electronic brief must be submitted in a single PDF file, via upload to the "Assignments" page of the

SMMCC Canvas site. In addition to this electronic submission, each team must also deliver **six (6) printed, spiral- or comb-bound copies, with correct color covers, of the final brief, by hand**, to the **Moot Court Office on the ground floor of Baier Hall no later than 12:00 p.m. (noon) on Wednesday, October 9, 2019.**

Penalties: The bound, printed copies of the brief **must be identical** to the electronic version of the brief submitted by the team, other than the addition of color covers. Both the electronic and printed copies of each team's brief will be reviewed for grading purposes. Any discrepancies between the electronic and printed version of the brief, no matter how minor, will result in point deductions and may be considered a breach of academic honesty. Competitors will incur a two-point penalty for each half hour an electronic copy (beginning at 12:00 a.m. on October 8, 2019) or the printed copies (beginning at 12:01 p.m. on October 9, 2019) of the brief are submitted late.

Oral Arguments

Each competitor shall be allotted 15 minutes per oral argument. Counsel for Appellant will argue first, followed by counsel for Appellee, followed by Appellant's rebuttal. Counsel for Appellant may reserve up to 5 minutes for rebuttal, which is deducted from the 15-minute allotment. Before the argument, Counsel for Appellant must inform the Bailiff how much time is being reserved for rebuttal.

All competitors will argue in two rounds designated as Rounds 1 and 2. During Round 1, competitors will argue "on-brief," which means they will argue on behalf of the party represented in their brief. During Round 2, competitors will argue "off-brief," (i.e., if they argued on behalf of the Appellant in Round 1, they will represent

the Appellee in Round 2 and vice versa). During oral argument, whether on-brief or off-brief, judges may question a competitor about any issue raised by the Problem. Competitors may make any non-frivolous argument supported by the record, regardless of whether the competitor made that argument in their own brief.

Sign-ups for oral arguments will be conducted electronically through Canvas. Competitors may sign up for both Rounds 1 and 2 from Thursday, October 3 at 7:30 a.m. until Friday, October 4 at 11:59 p.m. No changes to competitors' schedules will be accepted through Canvas after this time. Competitors will sign up for argument times on a first-come, first-served basis. Once a competitor has signed up, they will be locked into the time they signed up for, except as described in the next paragraph. Competitors may not sign up for any oral argument on behalf of another competitor. **Please note that no changes to competitors' schedules will be accepted through Canvas after October 4, 2019.**

Competitors who do not sign up for argument times will be randomly assigned argument times by the Board. In the event that a competitor has a conflict with one of their argument times, regardless of whether the competitor requested that time or the Board randomly assigned the 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. In order to confirm the switch, both the competitor requesting the switch and the other competitor must send e-mails to lawmoot@indiana.edu at least 48 hours prior to the argument.

Until competitors are eliminated from the SMMCC, they may not attend oral arguments that they are not arguing.

What to Wear

Competitors' appearance and conduct during oral arguments are evidence of their respect for the judges, other competitors, and the SMMCC. As a general but not absolute rule, "[a]ppropriate attire for

counsel is **conservative business dress in traditional dark colors.**"² The ECCs are happy to answer confidentially any questions about appropriate attire, either in person or by e-mail.

GOOD LUCK!

² Guide for Counsel in Cases to be Argued Before the Supreme Court of the United States (2019 ed.), at 3,

<https://www.supremecourt.gov/casehand/Guide%20for%20Counsel%202019.pdf>