

# **OFFICIAL RULES**

**29<sup>th</sup> ANNUAL  
DUBERSTEIN BANKRUPTCY  
MOOT COURT COMPETITION**

**February 27 – March 1, 2021**

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## **CONTACT INFORMATION**

### **RULES:**

The Duberstein Board  
Duberstein@stjohns.edu

### **FACT PATTERN:**

The Duberstein Board  
Duberstein@stjohns.edu

### **TEAM COMPOSITION:**

The Duberstein Board  
Duberstein@abiworld.org

# **THE 29<sup>th</sup> ANNUAL DUBERSTEIN BANKRUPTCY MOOT COURT COMPETITION**

## **ORGANIZATION OF THE COMPETITION**

The Duberstein Bankruptcy Moot Court Competition (hereinafter the “Competition”) is co-sponsored by the American Bankruptcy Institute and St. John’s University School of Law. Student members of the St. John’s Moot Court Honor Society (hereinafter the “Board”), the *American Bankruptcy Institute Law Review*, and the LL.M. in Bankruptcy program organize the Competition. The Competition is named in memory of the Hon. Conrad B. Duberstein, former Chief Judge of the United States Bankruptcy Court, E.D.N.Y., and St. John's alumnus.

## **CERTIFICATION**

### **I. Certification and Copyright Form**

By submitting a brief, each team member certifies that such brief has been prepared in accordance with the rules of the Competition and is the work product of only the members of the team (except as permitted by Rule V, below). Each team shall complete and submit electronically the official Certification and Copyright Form at the same time the brief is due as provided in Rule X, below.

## **TEAMS**

### **II. Number and Composition of Teams; Communication with Teams**

**(a)** Each participating school may enter one team, comprised of two or three students each. The total number of teams will be capped at 36, comprised of the first 36 schools that register. To be eligible to participate, a school must be ABA-accredited.

**(b)** All team members must be enrolled in the J.D. program of the school that they represent at the time of the Competition.

**(c)** On or before **Monday, January 4, 2021**, each team shall complete the Team Information Form that will be sent via email to the Official Team Contact Person. The Board will use the team member names as listed on the Team Information Form for awards and certificates.

**(d)** Each team shall designate an Official Team Contact Person on the registration form and shall provide the name of that individual, the official name of the law school, a telephone number, and email address for the Official Team Contact Person. All communications to the team will be addressed to the Official Team Contact Person, and the team shall be responsible for monitoring said numbers and addresses for communications from the Board. The name of the law school, as indicated on the registration form, will be

used for all awards and announcements. If a team wishes to change the Official Team Contact Person or related information, the Board must be notified by email addressed to:

Duberstein@abiworld.org  
**Subject: Official Team Contact Person – Team [number]**

### **III. Participation of Team Members in Oral Argument**

At least two members of each team must participate in oral arguments. (Please see Rule XII, below). If a team has three members, all three members may participate in oral arguments or one member may participate only in the preparation of the brief and need not argue orally.

### **IV. Substitution of Team Members**

Teams shall not add members after submission of the Team Information Form (Rule II(c)), except upon written permission of the Board based on a showing of extreme hardship. No substitution will be permitted after the commencement of the first argument unless the number of team members drops below two. The work product of a team member who resigns will be deemed the work product of student team members for the purpose of Rule V. The resigning team member may not join or assist any other team.

### **V. Outside Assistance**

**(a)** The brief and oral argument must be the work product of the student team members only. The text of the brief must be the original work of the team members and cannot be copied from other briefs or sources, except for passages clearly designated as quoted material. A Bench Memo and a Brief Grader's Guide will be prepared for the Competition judges. It is a violation of the Competition rules for any team member, coach, or any person assisting a team to obtain or seek to obtain a copy of the Bench Memo or Brief Grader's Guide for the current Competition, or to obtain any information about their contents other than information disclosed by the Board in general communications to all teams. Team members and coaches must report immediately to the Board any offer of such information.

**(b)** The prohibition on outside assistance does not prevent preliminary general discussion of the issues with faculty or others before beginning to write the brief. Nor does it prevent a faculty member or other person from critiquing a practice argument after submission of the brief, provided that the finalized substance of the oral argument is the work product of the team members. After submission of the brief, teams from different schools may hold practice arguments together; however, prior to submission of the brief, team members shall not attend practice arguments of other teams or communicate with anyone other than members of their team regarding the substance of their arguments.

**(c)** We encourage teams to arrange practice rounds before local Bankruptcy Judges and local bankruptcy practitioners. A number of sitting federal Bankruptcy Judges judge the

advanced rounds of the Competition. Teams are permitted to appear before invited judges for a practice round or in a preliminary competition sponsored by a local bar association (such as the Elliott Cup Competition in Texas). However, no invited judge may coach or assist a team beyond the critique of a practice or competition round. Teams appearing before a sitting Bankruptcy Judge in a practice or preliminary competition should ask the judge if he or she will be a judge in the Competition and, if so, must advise the Board of the name of the Judge.

## **VI. Report of Team Standing**

After completion of the Competition, the Board will send to the Official Team Contact Person: (1) the oral argument score sheets from the preliminary rounds; (2) the brief score sheets; and (3) the brief score computation sheet showing the calculation of the brief score under Rule XI(a) and an indication of any penalties assessed under Rule XXI. It is the Official Team Contact Person's responsibility to share these materials with team members, as the Board does not retain copies of scoring materials. The rankings and composite preliminary round scores of the top 15 teams after the preliminary rounds will be posted to the Competition website.

## **BRIEFS**

### **VII. Assignment of Sides**

Each team will be assigned randomly to serve as counsel for either petitioner or respondent for purposes of preparing a brief.

### **VIII. Length and Form**

Briefs shall be a maximum of thirty-five (35) pages in length, exclusive of the cover sheet, questions presented, table of contents, table of authorities, opinions below, statement of jurisdiction, statutory provisions, and appendices. Briefs shall be typed on white pages measuring eight and one-half (8.5) by eleven (11) inches. Margins on all sides shall be 1 inch, with double spacing between each line of text. Footnotes, headings, and subheadings may be single-spaced, however, they must be included within the margin limits. Briefs shall be in Times New Roman. The body text must be 12-point font and footnotes must be 10-point font. The document must be saved in PDF format, and may not exceed 8 MBs in size.

Pages shall be numbered. The "Questions Presented" section shall be placed after the cover sheet and shall be numbered "i" and the following pages shall be numbered accordingly. The "Statement of Facts" shall be on page number one (1). Unless otherwise altered by these rules, the format of the brief shall comply with the Rules of the Supreme Court of the United States. The "Statement of Jurisdiction" section of the brief shall state, "The formal statement of jurisdiction is waived pursuant to Competition Rule VIII." All citations shall comply with the form prescribed in the most recent edition of The Bluebook: A Uniform System of Citation.

Footnotes are not prohibited; however, they are intended to be used sparingly and should not be used for citations. A penalty may be deducted if a team gains an advantage by including information in a footnote. Such an advantage may include, for example, if the text had been included in the body of the brief it would have caused the brief to exceed the page limit. This penalty is at the Board's discretion and will be in proportion to the perceived advantage it creates for the team.

## **IX. Covers and Team Identification**

A brief cover sheet is required even though the brief is submitted electronically. The cover sheet shall be on a white page and not on red or blue colored pages. The cover sheet shall contain the assigned team number in the lower right corner with the words "Counsel for Petitioner/Respondent" (whichever is appropriate) underneath. The assigned team number shall also be placed on the top right corner of the cover sheet and of every page of text. Teams shall not sign the brief or indicate authorship in any other place. Neither the individual team members' names nor the school name should appear anywhere in the brief.

## **X. Service of the Briefs**

### **(a) Competition Briefs**

No later than **11:59 PM Eastern Standard Time on Tuesday, January 19, 2021**, each team must serve one copy of its entire brief (including appendices) on the Board by uploading the brief as a single file in PDF format no larger than 8 MB through the Brief Submission link which will be located on the Competition website, which can be accessed from [www.stjohns.edu/law/duberstein](http://www.stjohns.edu/law/duberstein). Additionally, each team must complete and submit the electronic Certification and Copyright Form required by Rule I above through the same link.

It is **not** necessary to send a printed copy of the Brief or Certification to the Board. **No team will be allowed to alter its brief after it has been submitted.**

### **(b) Service on Opposing Teams**

It is **not** necessary to serve briefs on any other team participating in the Competition. The Board will post all submitted briefs by team number on the Competition website ([www.stjohns.edu/law/duberstein](http://www.stjohns.edu/law/duberstein)). Briefs from other competitors may be downloaded and reviewed to prepare for the Competition.

### **(c) Copyright**

By submitting a brief, each team and each team member grants to St. John's University and to the American Bankruptcy Institute a non-exclusive right to publish the brief on the Internet and in print.

## **XI. Brief Scoring**

### **(a) Brief Score**

A committee of practicing attorneys will score the briefs anonymously. Each brief will be scored on a 50- to 100-point scale. Each brief will be scored by two scorers, with the brief score being the average of the scores received. In the event that the difference between the scores is greater than fifteen points, the brief will be scored by a third scorer and the brief score will be the average of the two closest scores. However, if one of the scores is at the mid-point between the other two, then the mid-point score will be the brief score.

### **(b) Best Brief Award**

The team with the highest brief score will receive the “Best Brief” award. In addition, the teams with the next four highest brief scores will receive “Outstanding Brief” awards. In the event of a tie, the tied briefs will be re-scored by a member of the St. John’s faculty, and the brief receiving the highest score will be the best brief. The re-scoring of tied briefs will not change the brief scores determined pursuant to the preceding subsection and those scores will be the ones used in the preliminary round pursuant to Rule XIV below. The team winning the “Best Brief” award and the teams winning “Outstanding Brief” awards will be announced at the Virtual Awards Reception. A team must argue in the preliminary rounds in order to qualify for the brief awards.

## **ARGUMENTS**

## **XII. Length and Format of Arguments**

The Competition will be held via Zoom. Each team is limited to thirty (30) minutes of oral argument. Two (2), and only two (2), team members will argue in each round. The division of the thirty (30) minutes allotted for the argument may be made at the discretion of the team; however, no team member may be apportioned fewer than ten (10) minutes. Petitioners may reserve up to three (3) minutes of rebuttal time prior to the commencement of the argument. Teams that reserve rebuttal shall notify the Bailiff of how to deduct rebuttal time before the arguments begin. Time reserved for rebuttal will be counted as part of the thirty (30) minutes allotted for the argument. Judges may allow additional argument time at their discretion. The Bailiff time cards will indicate when time has expired and when one (1), three (3), five (5), and ten (10) minutes of argument time remain. In addition, the Bailiff will use the chat function within Zoom to notify the competitors of the remaining time.

## **XIII. Online Competition Rules**

### **(a) General**

All teams are responsible for their internet and video conferencing capabilities during the competition. Competitors are advised to download Zoom onto their computers and practice with the technology **before** February 27, 2021. Competitors are advised to

disconnect all other devices other than the one used to connect to Zoom during the competition to eliminate competing sources of bandwidth.

Each team member must join their competition room 10-15 minutes before the round begins to give their information to the Bailiff, ensure proper internet connectivity, and ensure both video and audio settings are working properly. All team members arguing during the round must keep their video on for the entire round and be visible throughout the entire round. Competitors must not make any distracting movements during arguments and must silence all other electronic devices.

### **(b) Room Links and Passwords**

Communications will be sent to each team through email, including information such as the competition schedule, Zoom links and password, and certification forms. Each day, there will be a Competition Zoom Lobby where Competition staff will be located virtually for teams to come at any time to ask questions or raise concerns. If teams have a private question, the Competition staff will create a breakout room for the team to speak to the Competition staff privately.

### **(c) Zoom Setup**

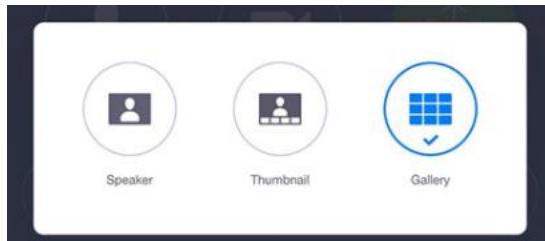
#### **(i) Display Name:**

When entering the room, the two team members arguing must change their display name to First Name, Last Name, Team Number, and either (P) for petitioner or (R) for respondent. An example of the correct Display Name is below:

**“John Smith - Team 40 (P)”**

#### **(ii) Gallery View vs. Speaker View**

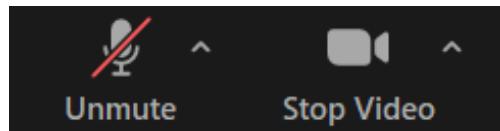
Competitors are advised to use Gallery View so that they may see all the judges and the Bailiff keeping time on the same screen.



#### **(iii) Muting and Unmuting**

Competitors must be on mute at all times during the rounds except to respond to the Bailiff's questions or during their argument. The mute and video off buttons are in the bottom left corner of the Zoom window.

Competitors should enter the room with their cameras on and microphones muted as shown below.



#### **(iv) Virtual Backgrounds**

The use of virtual backgrounds will not be permitted during the rounds. The team members should ensure the room in which they will be arguing looks professional. **Furthermore, the team members must ensure there is nothing in the room or in their Display Name that could identify the team's school.**

#### **(v) Sound**

Competitors may choose to use headphones during their argument. A headset is recommended to avoid feedback noises. (Headsets are earphones with built in or auxiliary microphones [e.g., Airpods].) These options will not factor into the scoring of the oral arguments.

#### **(vi) Lighting**

Competitors should make sure there is adequate lighting so judges can see them. Competitors should avoid joining the round with the camera facing a window or bright lights behind the competitors.

### **(d) During the Round**

#### **(i) Competitors Arguing From the Same Location**

The two team members arguing during a round may be in the same physical room, but may not have any other individuals in the room with them when arguing.

#### **(ii) Dress Code**

Competitors must be in full court room attire for their arguments. Competitors may choose to either sit or stand during their argument.

#### **(iv) Prepared Materials**

Competitors may print their notes and keep them in front of themselves. Competitors may not tape notes to the wall or have them on their laptops.

#### **(v) Communication During Rounds**

Once a round has begun, there shall be no communication in any form from any member of the audience, including coaches, faculty advisors, or team members who will not be arguing during that round. The two team members who are arguing during the round may not communicate with each other, unless it is to “pass notes” to each other physically or via private messaging through the Zoom chat function. Competitors may not communicate with coaches, third team members, faculty advisors, or anyone else other than the judges and the Bailiffs. Teams are not permitted to disclose the identity of their schools to judges until either the conclusion of the Competition or the team’s elimination from the Competition, whichever is earlier.

#### **(vi) Disruptions in Service and Cure Period**

In the case of a service disruption or Zoom failure, each team will receive a **10-minute cure period** to allow competitors time to reconnect to the round. During this time, the Bailiff will pause the round time. Time will resume when the competitor reconnects and resumes the argument. If a team member who is not arguing disconnects, the argument will continue, and the team member must reconnect as soon as possible.

Each team will be granted **no more than two** opportunities to cure (per round, not per competitor). The second time a failure occurs, competitors will receive any remaining time left of the team’s 10-minute cure period. If a competitor is unable to reconnect after the second interruption, the competitor must use the call in Zoom function to finish the round.

If the Zoom room itself crashes, the Bailiff will immediately stop the timer. The competitors should immediately return to the Competition Zoom Lobby and await further instructions. If the Competition staff is able to repair the connection within 10 minutes, they will do so. If they are unable to do so, the Competition staff will set up a new Zoom room. The competitor who was disrupted by the crash – but only for Zoom crashes caused by the system itself -- will have 30 seconds added to their argument to reorganize their presentation.

#### **(vii) Bailiffs**

Bailiffs will visually indicate to competitors their remaining time. If the Bailiff’s internet connection falters, the second Bailiff will turn on their video and continue providing the time indicators. The Bailiff time cards will indicate when time has expired and when one (1), three (3), five (5), and ten (10) minutes of argument time remain. In addition, the Bailiff will use the chat function to notify the competitors of the remaining time.

#### **(viii) Judges**

Judges will be instructed to connect to the Zoom room with their computer for both audio and video. Prior to the round, judges will be placed in a separate breakout room. When the round commences, judges will join the main room. After the arguments have concluded,

the judges will be placed in a separate breakout room for deliberations. During this time, competitors will remain in the main room.

If a judge's internet connection falters or other technological difficulties occur, **the round will not be stopped**. The judge will be instructed to attempt to fix the issue, and if the judge cannot do so quickly, the judge will be instructed to call in and continue listening and asking questions over the phone.

### **(ix) Attendance at Arguments**

No team member, coach, or faculty advisor of a team participating in the competition may attend an argument of any other team during the preliminary rounds. Absent the consent of both teams, the attendees at each argument are limited to the members of the competing teams and two coaches or two faculty advisors for each team. Requests for permission for additional attendees must be made to the Competition staff in the Competition Zoom lobby or to the Bailiff prior to the start of the round. Coaches and faculty advisors may not be in the same physical room as team members during oral argument. During the round, all attendees must turn off both their cameras and microphones. All attendees are prohibited from sending chats to competitors during the round.

### **(e) Round Conclusion**

#### **(i) Round Certification**

Immediately after each round, the two team members who have argued are required to submit an electronic certification that they have not received any unauthorized assistance during the round. The link to the certification will be sent via email and will be used after each round. Failure to submit the round certification within fifteen (15) minutes after the conclusion of the round may result in the team forfeiting its score for the round.

## **XIV. Scoring**

The scores for each round will be computed as follows:

	<u>Brief</u>	<u>Oral Argument</u>
1. Preliminary Rounds	40%	60%
2. Quarter-Final Round	0%	100%
3. Semi-Final Round	0%	100%
4. Final Round	0%	100%

## **XV. Preliminary Rounds**

### **(a) In General**

Each team will argue in two preliminary rounds, with one argument for petitioner and one for respondent. Each team will argue once on the first day of competition and once on the second day of competition. In the event of a tie, the team with the higher brief score will advance. While St. John's J.D. students may not compete in the Competition and are not eligible for any Competition awards, one or more "filler" teams composed of St. John's J.D. students may participate in the preliminary oral argument rounds.

### **(b) Pairing of Teams in Preliminary Rounds**

Pairing in the preliminary rounds will be random.

### **(c) Time and Place**

Oral arguments for the preliminary rounds will take place online on **Saturday, February 27, 2021**, and **Sunday, February 28, 2021**. The quarter-finalist announcement will be made on **Sunday, February 28, 2021**, at the end of the day.

Eight (8) teams will advance to the quarter-final round, four (4) teams will advance to the semi-final round, and two (2) teams will advance to the final round.

## **XVI. Quarter-Final, Semi-Final, and Final Rounds**

### **(a) Generally**

The eight (8) teams with the highest mean (average) scores in the two preliminary rounds will advance to the Quarter-Final Round to be held online on the third day of the Competition. In the event of a tie, the team with the higher brief score will advance to the Quarter-Final Round.

Judges in the Quarter-Final, Semi-Final, and Final rounds will confer and determine the winning team in each pairing and are not required to use score sheets or to calculate a numerical score. The winning team from each of the four (4) Quarter-Final arguments will advance to the Semi-Final round. The winning team from each of the two (2) Semi-Final arguments will advance to the Final round.

### **(b) Pairing of Teams**

Pairing for the Quarter-Final round will be determined by seeding, with the top seeded team arguing against the team seeded eighth (8<sup>th</sup>), the second (2<sup>nd</sup>) seeded team arguing against the team seeded seventh (7<sup>th</sup>), and so on. Seeding will be established according to a team's mean (average) score from the preliminary rounds. In the event that there are teams with the same mean (average) score, the team with the higher brief score will be

seeded higher. In the Semi-Final round, the winners of the arguments involving the first (1<sup>st</sup>) and third (3<sup>rd</sup>) seeded teams will argue against each other and the winners of the arguments involving the second (2<sup>nd</sup>) and fourth (4<sup>th</sup>) seeded teams will argue against each other. Seeding will be strictly followed in the Quarter-Final, Semi-Final, and Final rounds. Therefore, teams that have argued against each other in the preliminary rounds may be paired against each other in the Quarter-Final, Semi-Final, and Final rounds.

**(c) Assignment of Sides**

Assignment of sides to be argued will be made at the discretion of the Board.

**(d) Team Awards**

The two teams that advance to the final round will be a “Finalist” in the Competition. The winning team will be awarded the first-place team award. The other team will receive the second-place team award. The two teams that advance to the Semi-Final round but not the Final round will receive the third-place team awards. The winner of the Final round of the Competition will be announced at the Virtual Awards Reception. The winner of each pairing in the Quarter-Final and Semi-Final rounds will be announced after each argument.

**XVII. Best Oral Advocate**

The competitor with the highest mean (average) score for oral argument during the preliminary rounds will receive the “Best Oral Advocate” award. In addition, the competitors with the next four highest mean (average) scores for oral argument during the preliminary rounds will receive “Outstanding Oral Advocate” awards. In the event of a tie, the competitor from the team with the higher brief score will be chosen. If there are three (3) preliminary rounds, a competitor must argue at least twice in order to be considered for the oral advocacy awards. The winners of the “Best Oral Advocate” award and the “Outstanding Oral Advocate” awards will be announced at the Virtual Awards Reception.

**XVIII. Miscellaneous**

Participation in the Competition, whether as a team member, coach, or faculty advisor, constitutes consent to be photographed and recorded. Photographs and recordings may be displayed or distributed during and after the Competition in a variety of formats and media, including projection during the Virtual Awards Reception, posting on the Internet, and use in press releases and promotional materials. Participants waive all claims for any compensation, damages, or other remedies in connection with such photographs or recordings and their use.

## **INTERPRETATION AND ENFORCEMENT OF THE RULES**

### **XIX. Clarification, Interpretation, and Determinations**

Submit requests for clarification of the rules to:

Duberstein@stjohns.edu  
**Subject: Duberstein Rules**

Submit requests for clarification of the fact pattern to:

Duberstein@stjohns.edu  
**Subject: Duberstein Fact Pattern**

Requests for clarifications must be received no later than **1:00 PM Eastern Standard Time on Friday, January 15, 2021**. Clarifications and interpretations will be posted on the Competition website and transmitted to all participating schools by email addressed to the Official Team Contact Person.

Scoring is inherently subjective. The Board's determination of advancing and winning teams and of winning competitors shall be final. In the event of an error, the Board reserves the right, but has no obligation, to grant additional awards to any team or competitor disadvantaged by the error. **Any decisions or other actions taken by the Board shall be final and binding on all participants.**

### **XX. Amendments**

The Board reserves the right to make and implement any further rules and procedures or take any actions deemed advisable for the conduct of the Competition. Each participating school will be notified of any changes in writing or by email addressed to the Official Team Contact Person.

### **XXI. Penalties**

The Board may assess such penalties, including disqualification, as it deems reasonable and appropriate for failure to comply with the foregoing rules. **All penalties imposed by the Board shall be final and binding.** Specific penalties that will be deducted from a team's brief score or oral argument score for the following rule violations are set forth below:

- (a)** For late service of briefs required by Rule X, above, two points for briefs submitted less than an hour late and five (5) points per calendar day (up to a maximum of 10 points) for late service of briefs submitted later;
- (b)** Two (2) points per page beyond the page limit for the brief;

- (c) One half ( $\frac{1}{2}$ ) point for each page containing a violation of the type size or margin requirements where, in the Board's opinion, the violation gives the team an advantage (up to a maximum of 10 points).
- (d) Footnotes are not prohibited; however, they are intended to be used sparingly and should not be used for citations. A penalty may be deducted if a team gains an advantage by including information in a footnote. Such an advantage may include, for example, if the text had been included in the body of the brief it would have caused the brief to exceed the page limit. This penalty is at the Board's discretion and will be in proportion to the perceived advantage it creates for the team.
- (e) Additional penalties may be imposed if a team gains a clear advantage as a result of not following the aforementioned rules. This penalty is at the Board's discretion and will be in proportion to the severity of the violation and the perceived advantage it creates for the team.
- (f) Distracting movements, unmuting while not arguing, turning the camera off during the round, and messages sent to anyone other than between teammates may result in additional penalties. This penalty is at the Board's discretion and will be in proportion to the severity of the violation and the perceived advantage it creates for the team.