

FEBRUARY 2010 MICHIGAN BAR EXAMINATION

ESSAY PORTION

MORNING SESSION

QUESTION 1 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I

You are the new associate in a Michigan law firm and you are taking over the circuit court files of another associate who left due to a long, serious illness. In reviewing your newly acquired files, you discover an unfiled motion for summary disposition based on a lack of subject matter jurisdiction. However, the file also contains a scheduling order issued by the judge that states, among other things, that "all dispositive motions must be filed, served and heard not more than 30 days after the settlement conference." The settlement conference was two months ago and the trial is set for 18 days from now.

You must meet with your supervising attorney to discuss the status of your files. **What will you tell your supervising attorney about whether the summary disposition motion should be filed, whether it will be heard, and what other steps might need to be taken to protect your client's interests? Explain your answer.**

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I*******

QUESTION 2 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I

Two best friends, Parker and Daisy, were leaving the movie theater after seeing the latest vampire movie. The two teenagers were standing in the lobby when they began arguing over the ending of the movie. Frustrated by the conversation, Daisy took the lid off her drink and threw it in Parker's face. As she stomped off, Daisy threw her cup and remaining ice on the floor near the entrance of the movie theater. Johnny, a movie theater employee, witnessed the whole scene and was laughing so hard he could barely stand up. He finally managed to grab a wet floor sign and position it next to where Parker had been standing. Unfortunately, he got sidetracked when he was explaining the drama to his buddy and forgot to pick up Daisy's cup or put a wet floor sign near the entrance.

A few minutes later, another crazed vampire fan, Sara, came barreling through the entrance. She slipped on the wet floor and fell hard on her elbow. As she struggled to get up, she noticed she was sitting in a sticky puddle of cola and melted ice. Johnny came over to help her and noticed that her arm looked broken. Sara later went to the hospital for her broken arm. Other than having to wear a cast for six weeks and missing the opening of her favorite movie, Sara recovered fully and is back to normal.

After the argument with Daisy, Parker was so upset at having cola spilled all over her Team Werewolf t-shirt, that she ran out the opposite entrance door and into the parking lot. Just then, Fred, who was only paying attention to finding a parking spot closest to the entrance, didn't see Parker until he hit her with his car. Parker suffered from a deep laceration on her left forearm, which ultimately left an ugly scar.

Utilizing Michigan law, discuss all claims that Parker and Sara could raise from the events as described above. Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I*******

QUESTION 3 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I

Acme Anvil, Inc. ("Acme") is a Michigan corporation. Its primary shareholders are Amber and Greg, who together own 46% of the company's common stock. Nine other family members own the remainder of the common stock, each possessing 6%. This stock distribution has remained the same since the company's formation in 2001. Both Amber and Greg have served on Acme's Board of Directors since 2001. Greg is the President and Chief Executive Officer of Acme, while Amber serves as the Vice President and Chief Financial Officer.

In 2007, Acme entered into a 5-year contract with the Ironic Iron Company, agreeing to purchase iron ore from Ironic at prices significantly above market value. Amber entered into the contract on Acme's behalf after her psychic told her that iron prices would triple over the next few years.

Unhappy with the company's performance over the past two years, Uncle Bob, one of the shareholders, discovered that the reason for Acme's dismal performance was its contract with Ironic Iron. Uncle Bob demanded a meeting of the shareholders in order to elect new directors. In anticipation of a shareholder's meeting, Uncle Bob drafted a confidential agreement, signed by each of the nine minority shareholders, agreeing to vote for cousins Chris and Tammy as corporate directors in lieu of Greg and Amber.

Amber and Greg refused to hold a shareholder's meeting, claiming that the corporate bylaws did not require an annual shareholder meeting. Additionally, Aunt Faye, one of the minority shareholders who had signed Uncle Bob's agreement, indicated that she changed her mind and would not vote to oust Amber and Greg, as she simply could not be "mean" to her niece and nephew.

Discuss whether Uncle Bob can compel a shareholder's meeting, the probability of ousting Greg and Amber, and any possible legal recourse against Amber. Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I*******

GO TO BLUEBOOK II

QUESTION 4 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II

Brenda purchased the assets of Baker, Inc. and was subsequently sued by creditors of Baker on a theory of successor liability. Brenda retained Charles, a partner at Webster Law Firm, to defend her in the litigation.

Plaintiffs served interrogatories through Charles. Charles forwarded the interrogatories to Brenda, but did not discuss with Brenda any aspect of how to properly respond to them. Charles did not file any responses or objections to the interrogatories. Plaintiffs filed a motion to compel discovery. Charles failed to respond to the motion in any way. The motion was granted. Charles took no action to comply with the court order compelling Brenda to answer the interrogatories. A second motion to compel was filed and granted after Charles again failed to respond in any way to the second motion to compel. Charles took no action to comply with the second court order requiring Brenda to answer the interrogatories. Plaintiffs' counsel filed a motion for entry of default as a discovery sanction for Brenda's failure to comply with two court orders requiring her to answer the interrogatories. Charles failed to respond in any way to the motion for entry of default and the court granted the motion and entered a default against Brenda.

Upon receiving the order entering the default against Brenda, but before the court heard plaintiffs' motion for entry of a default judgment, Charles asked firm associate Marcus to take whatever steps are necessary to set aside the default and protect Brenda's interests. Marcus learned that Charles timely sent to Brenda copies of each order to compel discovery as well as the order granting entry of the default. However, there was no evidence that Charles otherwise communicated with Brenda. Concerned about the manner in which Charles handled the file, Marcus decided to discuss Brenda's case with Daniel, the managing partner of the Webster Law Firm.

Discuss the Webster Law Firm's ethical obligations. Is the firm required to report Charles to the Attorney Grievance Commission or can it still take steps to resolve the client's complaint quietly within the firm? Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II*******

QUESTION 5 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II

John Jones has owned Sunshine Bakery for many years. In November, he had a "Grand Re-opening" to celebrate his new redesigned store. Many people, including local media, were on hand for the event. Ms. Grandy, an 85-year old woman, attended the event. After purchasing a few items, she went to exit the building. Seeing a golden opportunity, Jones held the door open for Ms. Grandy as she started down the steps while a local news photographer clicked away. Suddenly, Ms. Grandy fell from the top step. After her fall, Jones helped Ms. Grandy to her feet, and an off-duty nurse provided some bandages for Ms. Grandy's scraped knees. After about 30 minutes, and as Ms. Grandy was about to leave, Jones said "I'm sorry about this, and even though it was not my fault, would you accept \$100 and a month's worth of pie if we can forget about this unfortunate event?" Ms. Grandy refused, stating "It sure was your fault, and I'll see you in court." As she left the scene she heard Jones exclaim, "I knew I should have had that step repaired."

A week later, Ms. Grandy received in the mail a photograph of her at the time she started to fall. On her way to thank the news photographer, Ms. Grandy passed the bakery, where she saw to her amazement that the steps had been completely replaced. Angered, she went to see a lawyer, who filed a premises liability suit entitled *Grandy v John Jones and Sunshine Bakery*. At trial, Ms. Grandy's attorney sought to have his client testify on direct examination to the following:

1. That upon leaving the scene she heard Jones state, "I knew I should have had that step repaired."
2. That Jones knew he was negligent because he offered her \$100 and a month's worth of pie.
3. That within a week the faulty steps were replaced with new ones.

Finally, her lawyer also sought to have the photograph admitted through Ms. Grandy.

Defense counsel objected to the testimony, as well as to the attempt to admit the photograph.

Discuss whether the testimony and exhibit should be admitted. Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II*******

QUESTION 6 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II

Mall Management contracted with Landscape Design to develop a landscape design for a new shopping mall. Mall Management told Landscape Design that it envisioned an "upscale" mall with designer boutiques, while acknowledging Michigan's tough economic circumstances. On April 2, 2008, Mall Management and Landscape Design entered a contract, which included this provision:

Mall Management agrees to pay Landscape Design for landscape design services, including master planning, budgeting, grading and drainage, irrigation and lighting, a fee equal to 8% of the cost of implementing the design, except that and in addition to the foregoing, preliminary work shall be paid at the hourly rate of \$150. Prior to submission of any design plan, Landscape Design must comply with cost limitations, if any, imposed by Mall Management.

During the preliminary design phase, Landscape Design and Mall Management met to discuss design concepts. No cost limitation on the plan was discussed, although Mall Management mentioned it was having problems attracting upscale retailers. On September 10, 2008, Landscape Design presented its preliminary plan to Mall Management, with an invoice for 458 hours worked, reflecting a balance due of \$68,700.

After paying the invoice, Mall Management asked Landscape Design to budget the cost of plan implementation. On September 28, 2008, Landscape Design presented a cost estimate of \$1,152,600 with an additional invoice for 32 hours worked, or \$4,800, compiling the estimate.

On October 15, 2008, Mall Management notified Landscape Design that the economy required scaling back the plan and that any future plan must comply with a \$700,000 cost limitation.

On December 10, 2008, Landscape Design presented its revised plan with an estimate of \$865,600, explaining that it could make no further cuts without jeopardizing the project's integrity.

Mall Management demanded that Landscape Design further revise the plan to satisfy the cost limitation. Landscape Design repeated it could not do so. Mall Management then forwarded the plan to another design firm, which indicated the current plan could not be reduced and that design planning would have to start from scratch. Mall Management refused to pay any additional sums to Landscape

Design, demanded that Landscape Design refund sums already paid, and hired the other firm, which submitted a plan within the cost limitation.

Landscape Design has contacted you for advice on whether it can recover any additional amount from Mall Management or whether it must refund any money it already received. What advice do you give? Explain your answer.

*****THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II*****

GO TO BLUEBOOK III

QUESTION 7 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III

Joan has had various allergies since childhood. With appropriate treatment through the years, she managed them well and they did not adversely affect her in any significant way. Joan graduated from high school and then obtained an Associate's Degree in medical record keeping from a community college.

After graduation, Joan did not look for work in the medical field, but rather decided to work with a friend she had met in college at a company named 3C's. This company develops and sells granite countertops. At 3C's, Joan worked a portion of the day in the small plant helping mix chemicals used to clean the granite. She spent the majority of her time in the office. There, she took orders, communicated with customers, and prepared invoices.

Shortly after beginning work for 3C's, Joan began to notice rash-like irritations on her hands. She visited a doctor who did patch testing and determined Joan was highly allergic to one of the chemicals used at 3C's to clean granite. The doctor advised Joan that she had most likely always been allergic to this chemical, along with her other allergic sensitivities. But, since she had not encountered the substance until she worked at 3C's, the allergic reaction had never manifested itself. The doctor advised Joan not to return to work at 3C's because this type of chemical permeates the atmosphere and would be present even in the office area.

Joan seeks your legal advice as to whether she has any workers' compensation remedies against 3C's. Will she be successful in seeking payment from 3C's of medical expenses related to her chemical exposure? Will she be successful in seeking disability (weekly wage loss benefits) from 3C's based upon her inability to return to work for it? Explain your answer utilizing Michigan law.

*****THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III*****

QUESTION 8 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III

Lisa and her husband Larry were married in 2002 and they have two children, ages 4 and 6. During the early years of their marriage they lived with Lisa's parents in Lansing, Michigan to save money. In January 2008, Larry abandoned looking for work in Michigan and, over Lisa's objection, moved by himself to Ohio and began working as a waiter there. Larry convinced Lisa to come and stay with him in Ohio for the summer of 2008, during which time the couple attempted to reconcile. Larry's explosive temper often got the best of him, however, and after a few serious outbursts, Lisa and the children moved back to Michigan and resumed living with Lisa's parents in September 2008. Lisa began working at a daycare. She earns about the same income there as Larry earns at his job, although Lisa does not need to pay rent or utilities while she lives with her parents.

In December 2009, Lisa received a telephone call from Larry, who, with Lisa's consent, has the children in Ohio to celebrate his birthday. During their conversation, Lisa asked Larry to begin paying child support. Larry became angry and threatened to file for divorce in Ohio and seek custody of the children.

Lisa visits your law office seeking advice on the following three questions:

1. Since Lisa lives with her parents and since Lisa's and Larry's incomes are roughly the same, Larry says Michigan's child support guidelines are not applicable and the parties can decide themselves how much (if any) support is paid. Assuming a divorce action has been filed, is Larry correct?

2. If Lisa files for divorce in Michigan before Larry voluntarily returns the children, does Michigan have jurisdiction over the children's custody, even though the last time the family lived together was in Ohio in the summer of 2008 and the children are not now in Michigan?

3. If a Michigan court were to determine custody, what would be the likely result?

How do you respond to Lisa's questions? Explain your answers.

*****THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III*****

QUESTION 9 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III

Battery Corporation is developing a new battery for use in the growing electric automobile market. Battery searched for a talented engineer to assist in the final development of such a battery. Bill Buck applied for the position, but had little engineering ability. Bill Buck impersonated Tom Lion, an experienced engineer with extensive knowledge regarding battery technology. Bill Buck presented to Battery a fake identification that he was Tom Lion and used Tom Lion's social security number. Battery offered Bill Buck a job (believing he was Tom Lion).

Bill Buck demanded a \$50,000 hiring bonus, since he believed he would be immediately fired after Battery discovered that he was not Tom Lion and had little engineering ability. Battery agreed to pay a hiring bonus; however, it did not have adequate liquid assets to pay Bill Buck a \$50,000 hiring bonus at the time he commenced employment. Therefore, it offered to pay Bill Buck a hiring bonus on the condition that he remained employed for six months. Bill Buck agreed to this condition, although he had no intention of waiting six months to negotiate the instrument. As a result, Battery hired Bill Buck. Battery paid the hiring bonus of \$50,000 by executing an instrument in which it agreed to pay on demand \$50,000 on the order of Tom Lion. However, the condition that the hiring bonus would be paid only if Bill Buck completed six months of employment was not included on the face of the instrument.

One day after receiving the instrument from Battery, Bill Buck presented the instrument to Cashrich Company, a check cashing company. Cashrich charges a ten percent fee for its service. Bill Buck again used Tom Lion's social security number and fake identification and endorsed the instrument to Cashrich for payment. Cashrich paid Bill Buck \$45,000 in cash (\$50,000 less its ten percent service fee). Cashrich did not know that Bill Buck had represented to Battery that he would not demand payment of the \$50,000 until he had been employed by Battery for six months.

On the same day it purchased the instrument, Cashrich demanded payment of \$50,000 from Battery. Battery denied payment on the instrument on the basis that Bill Buck had not been employed by Battery for six months. Cashrich filed suit to recover the face value of the instrument, i.e., \$50,000.

Analyze the rights of Cashrich Company to collect on the \$50,000 instrument from Battery Corporation. Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III*******

FEBRUARY 2010 MICHIGAN BAR EXAMINATION

ES SAY PORT ION

AFTERNOON SESSION

QUESTION 10 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV

Dennis Dwayne, age 51, was a successful race car driver living in Michigan. He was married to Barbie, and had twin 5-year-old boys, Ronnie and Paulie, and a 12-year-old stepdaughter named Kathleen.

In May 2009, Dennis was diagnosed with an inoperable brain tumor and given a year to live. Wanting to get his affairs in order, Dennis drafted his will on his personal computer. After printing the will, he signed and dated the document in the presence of his mother, Jean, who signed the document as a witness.

In October 2009, Barbie went to the fertility clinic, where she and Dennis had sought treatment previously, and had an embryo implanted without Dennis' knowledge. The frozen embryos had been stored since the twins' birth. Before Dennis received his diagnosis, the couple planned to have more children. Barbie believed that an infant would give Dennis a reason to continue fighting the disease, and planned to surprise Dennis with the news of her pregnancy as a Christmas gift.

Unfortunately, Dennis lost his battle with cancer and died in early December 2009, before Barbie told him about her pregnancy. Locating the will, Barbie was shocked to learn that the terms of the will split Dennis' wealth evenly between Marcel, Dennis' auto mechanic, and Dennis' mother, Jean.

Barbie contested Dennis' will, claiming that the will was invalid. Barbie seeks to recover Dennis' estate for the benefit of herself, Ronnie, Paulie, Kathleen, and the unborn baby boy, whom she plans to name Dale. Jean, on the other hand, sought to uphold the validity of the will.

Applying Michigan law, discuss the arguments most likely to be advanced by Barbie and Jean, and the likelihood of Barbie, Ronnie, Paulie, Kathleen, the unborn baby, and Jean being able to take a share of Dennis Dwayne's estate. Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV*******

QUESTION 11 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV

In the spring of 2009, Peter Parker bought a Lake Michigan beachfront home from Debbie Drake. Drake advertised the property as: "A lovely cottage built in 1980; recently remodeled with new kitchen cabinets and fresh carpet and wall paneling throughout." Parker had an independent expert inspect the home and all accessible structural beams. The inspection report was favorable. A week prior to the closing date, Drake provided a Seller's Disclosure Statement, as required by the Michigan Seller Disclosure Act, indicating that, to her knowledge, there were no defects on the property. Specifically, Drake indicated that the home had no history of infestation. Drake subsequently executed a deed in Parker's favor, conveying Drake's fee simple interest to the property.

When summer arrived, Parker discovered that many people walked the beach in front of his home. Parker posted signs prohibiting trespassers on his beach. However, the beach walkers ignored the signs.

That same summer, Parker decided to remove wall paneling from the interior of the house and install drywall. When Parker removed the paneling from the lakeside exterior wall, he immediately noticed extensive termite damage to the wooden structural beams. Although the termites had since vacated the premises, the structural damage cost \$20,000 to repair.

Discuss Parker's rights with respect to (a) preventing people from walking along his stretch of beach; (b) his recourse against Drake for denying any history of termite infestation in the home. Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV*******

QUESTION 12 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV

Gregarious Greg's Self-Storage is a Michigan business that offers customers secured storage space for their personal property. On January 1, 2008, Biff signed a 2-year lease on a self-storage lot to store his collection of rare comic books, valued at \$10,000. Under the terms of the lease, Biff is required to pay Greg \$75 a month, payable at the beginning of each month.

Biff left Michigan for an extended vacation on November 15, 2009 and did not return until December 10, 2009. Before he left on his vacation, Biff forgot to pay his December 2009 rent payment for the storage facility, which was due to Greg on December 1. As a result of Biff's delinquency, Greg mailed Biff the following letter on December 2 by first-class mail:

"Your self-storage rent in the amount of \$75.00 is past due. If payment is not received by December 5, 2009, the contents of your storage space will be confiscated and sold."

On December 6, Greg posted the following classified advertisement on a popular Internet advertising site:

"For Sale. One-of-a-kind Comic Book Collection. Ten boxes, 1930s-50s, pristine condition! \$3,000. Contact Greg at 517-555-5555."

As a result of this advertisement, Greg sold the comic book collection for \$1,500 to Tammy, who responded to his advertisement, on December 8.

When Biff returned home on December 10, he discovered that the padlock to his storage space was cut and his comic books were missing. That afternoon, he confronted Greg about the empty storage space and discovered that Greg had sold his comic book collection to Tammy because he had failed to pay rent on the storage space.

Discuss whether or to what extent Michigan law allows Biff to recover (a) the comic book collection from Tammy; and (b) any monetary damages from Greg regarding the sale of his comic book collection. Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK IV*******

GO TO BLUEBOOK V

QUESTION 13 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V

The City of South Pointe is an affluent community located on Lake Michigan. At one time, every home in South Pointe was valued in excess of \$1,000,000. Traditionally, South Pointe homes were sold by word of mouth. A property owner would inform neighbors of the intent to sell and several prospective buyers would submit offers. For many years, this marketing method produced rapid and lucrative sales. "For Sale" signs, although not precluded by ordinance, were never posted in front of the homes and were considered socially unacceptable.

When the economy soured, many residents lost their homes to foreclosure. Banks that owned the foreclosed properties began posting "For Sale" signs in front of the homes. Property sales slowed to a 20-year low. Home values dropped by 30 percent in 2008. The sight of all the "For Sale" signs caused concern for many residents. Residents, worried about the value of their homes, put their homes up for sale. Virtually every home offered for sale displayed a "For Sale" sign on the front lawn. Many residents believed that the use of "For Sale" signs contributed to falling property values. Home values continued to drop in 2009.

Fearful that the declining property values will adversely impact the City tax base and would further cause existing residents to leave their community, on October 1, 2009, the South Pointe City Council enacted the following Sign Ordinance:

"It shall be unlawful for a homeowner to post in front of his or her home any sign that indicates the home is for sale. Persons who violate this ordinance shall be fined \$1000. This ordinance shall take effect on December 1, 2009."

On December 15, 2009, Jack Jones decided to sell his home. He posted a "For Sale" sign on his front lawn and was issued a citation for violating the Sign Ordinance.

What is the best argument Jack can advance to contest the citation and ordinance? Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V*******

QUESTION 14 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V

Betty and Bob Burns were deeply in debt and experiencing financial hardship. Betty called her neighbor, Hanna Hand, to discuss her financial troubles. Betty's home was well insured. Betty expressed the intent to burn down her own home to collect insurance proceeds. Betty asked Hanna to set the fire for her, but Hanna declined. Betty asked Hanna to purchase gasoline for her and again Hanna declined, stating, "I want no part of your crime." Betty then asked Hanna whether Hanna kept gasoline for her lawn equipment in her garage. Hanna indicated she had two full containers of gasoline in her garage. Betty asked Hanna to keep her garage door unlocked that evening, so that Betty could take Hanna's gasoline. Hanna confirmed that she would leave her garage door unlocked. Betty thanked Hanna and took the gasoline from Hanna's garage. The following day, while Bob was away, Betty poured the gasoline throughout her home. When Bob returned, he smelled gasoline and traced it to the rear of the home. There he found Betty distributing the gasoline. Bob was shocked to see Betty distribute the last few ounces of gasoline and ignite the fire. Bob grabbed Betty by the arm and escorted her out of harm's way. Neither Bob nor Betty made any attempt to call the fire department or extinguish the fire. The couple stood outside and watched as their home was engulfed in flames.

Discuss the facts and law that would support the imposition of criminal liability, if any, on Betty, Hanna and Bob. Explain your answer.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V*******

QUESTION 15 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V

Bob Smith is a life-long Michigan resident who is married with two children. He has been employed as a sales representative for the same employer for 15 years. Bob's children participate in the local youth soccer association. In 2007, Bob was elected treasurer of the soccer association. In the spring of 2009, the prosecutor charged Bob with misappropriation of the soccer association's funds, in violation of MCL 750.279. The maximum sentence imposed for this felony is 4 years. MCL 777.160. Bob was arrested and released after he posted a \$25,000 cash bond.

Bob retained a lawyer and trial was scheduled for December 21, 2009. On the trial date, Bob fired his lawyer in open court. Bob stated, "I want to represent myself. I have been preparing my defense since my arrest. I am aware of all my rights, and I know I have the right to represent myself. I simply do not believe that any lawyer will be able to represent me as effectively as I will be able to represent myself. I want to represent myself and I want to start the trial today." The trial court responded, "Is anyone making you say this, you are charged with a felony?" Bob said, "no one is making me say this and I know I am charged with a felony." The trial court then said: "Very well, Mr. Smith. You have the absolute right to represent yourself. You appear ready, willing and able to proceed. Your request for self-representation is granted."

The prosecutor presented properly admitted evidence that established beyond a reasonable doubt each element of misappropriation of funds. The trial court admitted all evidence Bob introduced in his defense. Nonetheless, Bob did a miserable job of representing himself. The jury convicted Bob as charged. Upon receiving the jury verdict, the trial court revoked Bob's bond and remanded him to the county jail where he awaits his sentencing. Bob immediately retained new counsel to represent him in the trial court through his sentencing. Bob has asked his new trial counsel to do whatever he could to obtain Bob's release from incarceration.

What action may Bob's new counsel take prior to imposition of Bob's sentence that could result in Bob's release from incarceration? Describe and explain the best arguments that may be advanced to support this action and any expected counter arguments the prosecutor may make.

*******THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V*******