<u>QUESTION 3</u> THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK I

Kerry bought a home in Caravaggio City, Michigan in 2003. Her purchase was financed by a loan provided by First Bank of Caravaggio, to whom Kerry granted a mortgage. The mortgage document included traditional information, including the loan amount, interest rate, repayment terms, and identities of the parties. First Bank was named as the lender on the mortgage, but the mortgage document also contained the following language:

"Mortgage Registration System (MRS) is the mortgagee under this security instrument. MRS is a separate corporation acting as a nominee for lender and lender's successors and assigns. This document secures to lender the repayment of the loan and the performance of borrower's covenants and agreements. Borrower understands and agrees that MRS holds legal title to the interests granted in this instrument, and if necessary, MRS has the right to exercise those interests, including the right to foreclose and sell the property."

Kerry signed the mortgage and it was properly recorded soon after closing. Subsequently, First Bank bundled Kerry's mortgage with similar mortgages and sold them to National Bank. The sale and assignment were properly recorded.

Unfortunately, Kerry lost her job in late 2011. Kerry stopped making her mortgage payments a few months later, and MRS moved to foreclose on the property.

MRS printed notice of the impending foreclosure by sale in the county newspaper for four weeks in April 2012, posted a copy of the foreclosure notice to the front door of Kerry's home, and served notice on Kerry personally. During this time, Kerry was trying to borrow money to keep her home, but she was unsuccessful in raising enough money in time. On May 15, 2012, a public foreclosure sale was held where MRS purchased the home for the outstanding balance of the loan. A deed was subsequently issued to MRS, which MRS immediately recorded. MRS then quitclaimed the deed to National Bank, which was properly recorded.

National Bank brought an order of eviction against Kerry. Kerry immediately filed an action in the local circuit court challenging the eviction and seeking to quiet title in her favor. Kerry first argues that the method chosen to foreclose on the property was not valid and/or was deficient. Second, Kerry argues that the foreclosure is invalid because MRS was not a proper party to foreclose on the property and may not foreclose in a non-judicial setting. Finally, Kerry notes that since the foreclosure, she was able to raise enough money to pay the balance of the mortgage, the outstanding mortgage payments and other interest and fees. Within two weeks of the foreclosure, she delivered a check for this amount to National Bank. National Bank, unsure what to do with Kerry's check, placed it in an escrow account and is defending the foreclosure action to the fullest extent provided by Michigan law.

Assess the two arguments raised by Kerry against the validity of the foreclosure. Further, assuming that the foreclosure was valid, *assess* the legal effect, if any, of Kerry delivering the check to National Bank.

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