

**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.**

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