

**QUESTION 9 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III
OR IN SOFTEST ANSWER SCREEN 9**

Dwight Defendant was charged with murder and demanded a jury trial. Dwight, an African American, hired counsel and the matter eventually proceeded to trial. During jury selection, the prosecutor made a number of peremptory challenges, but three of those challenges caused Dwight's counsel concern.

The prosecutor exercised a peremptory challenge against Alice White, a middle-aged African American woman. The prosecutor also exercised a peremptory challenge against Ellen Scott, an African American woman of 30. The prosecutor also peremptorily challenged Frank Fields, an African American roughly Dwight's age. The prosecutor made no challenge to two other African American jurors.

Before the challenges, questioning by the prosecutor yielded the following answers: Alice indicated that, although she could be fair and impartial, she previously served on a jury that could not reach a verdict on a murder charge. Alice said she was the lone holdout on that jury, arguing with the other 11 jurors that the defendant was not guilty.

Ellen had indicated she was a single mother with triplets at home. She was the primary caregiver of the children. To place the children in daycare would be well beyond her means. She would be glad to serve on the jury, thought she could be fair and impartial, but her mind would be with her children.

Frank had repeatedly said he could be fair to both sides, but added oddly while looking straight at the prosecutor, "You're going to have to bring your 'A-game' to convict my man."

Sensing something amiss, defense counsel said the prosecutor's challenges "violated my client's constitutional rights" and that the challenged jurors, who remained in the jury room on another floor, should be returned to the jury before the jury is sworn or the remaining jurors are dismissed.

More fully articulate the defense counsel's position. Also, delineate the procedure the court must follow in resolving defense counsel's request. Finally, based on the facts given, how should the prosecutor respond? Explain your answers.

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