

## Practice Standards

December, 2012

### Section VI, Qualifications and Duties of Counsel

#### 19. Preparation for Challenging the Prosecution's Case

A. Counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of acquittal.

B. Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.

C. In preparing for cross-examination, counsel should be familiar with the applicable laws and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

D. In preparing for cross-examination, counsel should:

- a. consider the need to integrate cross-examination, the theory of the defense, and closing argument;
- b. consider whether cross-examination of each individual witness is likely to generate helpful information;
- c. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;
- d. consider a cross-examination plan for each of the anticipated witnesses;
- e. be alert to inconsistencies in a witness' testimony;
- f. be alert to possible variations in witness' testimony;
- g. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
- h. have prepared a transcript of all audio or video tape recorded statements made by the witness;
- i. where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records, and department regulations for possible use in cross-examining police witnesses;
- j. be alert to issues relating to witness credibility, including bias and motive for testifying; and,
- k. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witness or prior sworn testimony of the witness.

E. Counsel should consider conducting a *voir dire* examination of potential prosecution witness who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections.

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F. Before beginning cross-examination, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If counsel does not receive prior statements of prosecution witnesses until they have completed direct examination, counsel should consider making appropriate motions or sanctions and, at a minimum, request adequate time to review these documents before commencing cross-examination.

G. Where appropriate, at the close of the prosecution's case and out of the presence of the jury, counsel should move for a judgment of acquittal on each count charged. Counsel should request, when necessary, that the court immediately rule on the motion so that counsel may make an informed decision about whether to present a defense case.