

Practice Standards

December, 2012

Section VI, Qualifications and Duties of Counsel

18. Opening Statement

A. Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, unless a strategic reason exists for not doing so.

B. Counsel should be familiar with the laws of the jurisdiction and the individual trial judge's rules regarding the permissible content of an opening statement.

C. Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement and of deferring the opening statement until the beginning of the defense case. It should only be in exceptional circumstances that the opening statement is not made at the first opportunity.

D. Counsel's objective in making an opening statement may include the following:

- a. to provide an overview of the defense case;
- b. to identify the weaknesses of the prosecution's case;
- c. to emphasize the prosecution's burden of proof;
- d. to summarize the testimony of witnesses and the role of each in relationship to the entire case;
- e. to describe the exhibits which will be introduced and the role of each in relationship to the entire case;
- f. to clarify the jurors' responsibilities;
- g. to state the ultimate inferences which counsel wishes the jury to draw; and,
- h. to establish counsel's credibility with the jury.

E. Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement in the defense summation.

F. Whenever the prosecutor oversteps the bounds of proper opening statement, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions, unless tactical considerations suggest otherwise.