

Appendix 28-1: Guideline 7.4 Opening Statement

Appendix 28-1 Guideline 7.4 Opening Statement*

- (a) Prior to delivering an opening statement, counsel should consider whether to ask for sequestration of witnesses.
- (b) Counsel should be familiar with North Carolina law and the individual trial judge's practices regarding the permissible content of an opening statement. Counsel should consider the need to, and if appropriate, ask the court to instruct the prosecution not to mention in opening statement contested evidence for which the court has not determined admissibility.
- (c) Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement.
- (d) Counsel's objectives in making an opening statement may include the following:
- (1) to introduce the theory of the defense case;
 - (2) to provide an overview of the defense case;
 - (3) to identify the weaknesses of the prosecution's case;
 - (4) to emphasize the prosecution's burden of proof;
 - (5) to summarize the anticipated testimony of witnesses, and the role of each in relationship to the entire case;
 - (6) to describe the exhibits that will be introduced and the role of each in relationship to the entire case;
 - (7) to clarify the jurors' responsibilities;
 - (8) to state the ultimate inferences counsel wants the jury to draw;
 - (9) to personalize the client and counsel for the jury; and
 - (10) to prepare the jury for the client's testimony or decision not to testify.
- (e) Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement into the defense opening statement and summation.
- (f) Whenever the prosecutor oversteps the bounds of a proper opening statement, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions, unless sound tactical considerations weigh against any such objections or requests. Such tactical considerations may include, but are not limited to:

*Reprinted from N.C. COMM'N ON INDIGENT DEFENSE SERVS., PERFORMANCE GUIDELINES FOR INDIGENT DEFENSE REPRESENTATION IN NON-CAPITAL CRIMINAL CASES AT THE TRIAL LEVEL (Nov. 2004). For the complete guidelines, see *infra* Appendix A of this manual.

- (1) the significance of the prosecutor's error; and
- (2) the possibility that an objection might enhance the significance of the information in the jurors' minds, or otherwise negatively affect the jury.