

Practice Standards

December, 2012

Section VI, Qualifications and Duties of Counsel

9. The Duty to File Pretrial Motions:

A. Counsel should consider filing an appropriate motion whenever there exists a good faith reason to believe that the defendant is entitled to relief which the court has discretion to grant.

B. The decision to file pretrial motions should be made after considering the applicable law in light of the known circumstances of each case.

C. Counsel should withdraw or decide not to file a motion only after careful consideration and determining whether the filing of a motion may be necessary to protect the defendant's rights, including later claims of waiver or procedural default.

D. Counsel should consider the advisability of disqualifying or substituting the presiding judge. This consideration should include any information about the judge's history in aligning himself with the prosecution on bail issues, motion rulings, trial rulings, any routine refusals of plea bargains, the client's experience with the judge, and any specific dislike of counsel, other public defenders, or public defenders in general.

- a. Prior to filing a motion to disqualify or substitute the judge, counsel shall consult with the managing attorney in his office and/or his or her Regional Deputy Public Defender.
- b. The decision to disqualify a judge shall only be made when it is a reasoned, strategic decision and in the best interest of the client. The final decision rests with counsel.