

## Professional Responsibility

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# Maintaining the Integrity of the Tribunal

## 1 Candor to the Tribunal

### 1.1 False representations or evidence & duty to remedy

Rule 3.3(a), (b) & (c)

*Nix v. Whiteside* (US 1986)

- Ineffective assistance of counsel claim rejected
- Court reiterates *Strickland* standard
  - Lawyer's conduct fell below standard of reasonableness
  - Client suffered prejudice (i.e. outcome of case was less favorable) as a result
- Lawyer warned client that if client gave false testimony lawyer would have to disclose that to the court and would seek to withdraw if client insisted on doing so
- Client testified truthfully

*U.S. v. Long* (8th Cir. 1988)

- Conviction affirmed, without prejudice to defendant's ability to assert ineffective assistance claim in collateral proceeding
- Prior to client's testimony at trial, lawyer told judge he believed client might commit perjury
- Client then declined to testify
- Court says evidentiary hearing is needed to determine whether attorney's conduct fell below *Strickland* standard of competence

### 1.2 Candor in Ex Parte Proceedings

Rule 3.3(d)

Attorney must disclose all relevant facts, including those adverse to client

## 2 Impartiality & Decorum

Rule 3.5

## 2.1 Ex Parte Communications

### Rule 3.5(b)

- Prohibition is not limited to communication about the case, but covers all communication about any subject
  - In practice, limited social communication (e.g. exchange of greetings) may not result in discipline absent circumstances suggesting prejudice
  - But the best practice is for lawyers to avoid all communication with judges and jurors while case is pending
  - Judicial ethics rules likewise prohibit *ex parte* communication by judge with parties, attorneys, and others
  - Even if judge initiates communication with lawyer, lawyer should refrain from engaging in communication

## 2.2 Trial Publicity

### Rule 3.6

*Gentile v. State Bar of Nevada* (US 1991)

- Attorney disciplined for public statement about pending criminal case
- Discipline violated first amendment, where statements expressed political opinion and were unlikely to prejudice client's right to fair trial

## 2.3 Lawyer as Witness

### Rule 3.7

## 2.4 Special Responsibilities of Prosecutors

### Rule 3.8

## 3 Advocate in Non-Adjudicative Proceedings

### Rule 3.9