



Utah Supreme Court
Advisory Committee on the Rules of Professional Conduct
Meeting Agenda
Cory Talbot, Chair

Location: Virtually via [Webex Link](#)

Date: December 3, 2024

Time: 4:00 – 6:00 p.m.

Welcome and approval of minutes	Tab 1	Cory Talbot
Discussion: Public comments for Rule 14-806 and Rule 3.3	Tab 2	Cory Talbot

Reminder: Check style guide for conformity before rules are sent to the Supreme Court.

Upcoming Items:

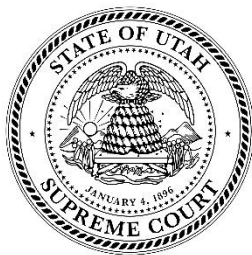
- Referral fees
- Rule 8.4
- Rule 1.0

Rules of Professional Conduct Committee Website: [Link](#)

2025 Meeting Schedule:

Jan 7 • Feb 4 • Mar 4 • April 1 • May 6 • June 3 • Aug 5 • Sept 2 • Oct 7 • Nov 4 • Dec 2

Tab 1



Utah Supreme Court's Advisory Committee on the Rules of Professional Conduct

[Draft] Meeting Minutes

October 1, 2024

Via Webex

4:00 pm Mountain Time

Cory Talbot, Chair

Attendees:

Cory Talbot (Chair)
Jurhee Rice (Vice Chair)
Ian Quiel
Robert Gibbons
Hon. Amy Oliver
Hon. Trent Nelson (emeritus)
Mark Nickel
Lynda Viti
Mark Hales
Christine Greenwood (ex officio)
Hon. M. Alex Natt (Recording
Secretary)

Excused: Austin Riter, Julie Nelson,
Ashley Gregson, Adam Bondy, Alyson
McAllister, Hon. James Gardner, Hon.
Craig Hall, Dane Thorley

Staff:

Stacy Haacke

Guests:

Beth Kennedy

1. Welcome, Approval of the August 6, 2024 meeting minutes (Chair Talbot)

Chair Talbot recognized the existence of a quorum and called the meeting to order at 4:03 p.m.

Chair Talbot asked for a Motion to approve the August 6, 2024 meeting minutes. Judge Oliver moved for approval. Ms. Rice seconded. The Motion passed unanimously.

2. Rule 3.3 (Beth Kennedy)

Ms. Kennedy recommended changes to Rule 3.3 to correct an error in the current version of the rule. The Committee had previously restructured the rule to change the applicable *mens rea* for each kind of disclosure. In the restructure, the Committee misnumbered a portion of the rule. The Committee agreed to renumber the rule to correct the oversight as suggested in the materials appended to the agenda. Mr. Gibbons moved to adopt the proposed change to the Rule. Mr. Quiel seconded the motion. The motion carried unanimously.

The Committee also noted that line 125 of the Comment is incorrect in referencing “(b)” which must be corrected to “c.”

3. Standard 16 (Stacy Haacke)

The Committee reviewed questions submitted by the URCP drafting committee regarding Standard 16. The Committee felt that the questions posed were outside the purview of the Committee as it did not draft Standard 16 and the questions are not related to the Rules of Professional Conduct. The Committee decided to inquire with the Supreme Court as to next steps.

The next meeting of the Committee is November 5, 2024.

The meeting adjourned at 4:48 p.m.

Tab 2

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on “Continue Reading.” To submit a comment, scroll down to the “Leave a Reply” section, and type your comment in the “Comment” field. Type your name and email address in the designated fields and click “Post Comment.”

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

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Posted: October 25, 2024	Utah Courts
<p>Rules Governing the Utah State Bar – Comment Period Closes December 9, 2024</p> <p>USB14-806. Admission pro hac vice. AMEND. The proposed amendment for pro hac vice admission would remove the requirement that a Utah Bar member be a Utah resident and have a law office in Utah. Feedback from those with experience using this rule, and multijurisdictional practice is highly encouraged.</p> <hr/> <p>This entry was posted in -Rules Governing the State Bar, USB14-0806.</p>	
<p>« Code of Judicial Administration – Comment Period Closes December 12, 2024</p>	<p>Rules of Professional Conduct – Comment Period Ends December 9, 2024 »</p>

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To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

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 - [-Rules Governing the State Bar](#)

UTAH COURTS

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2 thoughts on “Rules Governing the Utah State Bar – Comment Period Closes December 9, 2024”

Jean Gustafson
October 25, 2024 at 8:09 pm

I think expansion of the pro hac vice rule, from the current Utah based residency and practice requirements to a more expansive offering allows greater flexibility for both practitioners, as well as providing a greater pool of attorneys to clients. It may be argued that this expansion may bridge the gap in attorney deserts and also provide more opportunities for representation for indigent and under represented persons.

I love how the Utah bar is first in the nation to try new ideas to provide greater access to representations for the public. With greater specialization of areas of practice, this proposed rule offers a common sense solution for much needed representation in highly specialized practice areas ,as well as other practice areas for underserved communities.

[Reply](#)

John Macfarlane
October 28, 2024 at 1:41 pm

I love the level of civility and professionalism shown between lawyers in this state. I am concerned that allowing non-resident attorneys to act as “local counsel” for an out of state lawyer to practice in Utah will lead to a disruption of civility between lawyers. Most of my experiences with pro hac lawyers from out of state have been negative and I worry that removing the local requirement will increase the number and likelihood of negative experiences with out of state counsel. Having a local attorney, who cares about their reputation in the community, provides a layer of responsibility that decreases the chances of uncivil practices between local attorneys with pro hac attorneys.

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1 **Rule 14-806. Admission pro hac vice.**

2 *Effective: 11/1/2020*

3 (a) **Applicability.** An attorney who is not a Bar member but is admitted to practice law
4 in another state or in any court of the United States or Territory or insular possession of
5 the United States must apply to be admitted pro hac vice under this rule before
6 appearing as counsel before any state or local court or administrative or governmental
7 body in the State of Utah (“**Utah tribunal**”).

8 (b) **Rule application.**

9 (1) This rule applies to:

10 (A) All actions or proceedings pending before a court of Utah:

11 (B) All actions or proceedings pending before a Utah administrative or
12 governmental body, unless the rules of that body provide otherwise;

13 (C) All arbitration or alternative dispute resolution procedures in Utah that are
14 court annexed, court ordered, or mandated by statute or administrative rule; and

15 (D) All services incident to any of the proceedings in paragraphs (b)(1)(A)
16 through (b)(1)(C), including, but not limited to, discovery and settlement
17 negotiations.

18 (2) This rule does not apply to arbitration or alternative dispute resolution
19 procedures in which the parties engage voluntarily or by private agreement.

20 (c) **Permission to appear.** A non-Utah licensed attorney may be permitted to appear in a
21 particular case or proceeding if the Utah tribunal in which the matter is pending
22 determines that admission pro hac vice will serve the interests of the parties and the
23 efficient and just administration of the case. A non-Utah licensed attorney who resides
24 in Utah may be permitted only after receiving a Practice Pending Admission Certificate.

25 (d) **Admission is discretionary.** Admission pro hac vice under this rule is discretionary
26 with the Utah tribunal in which the application for admission is made. The Utah

27 tribunal may revoke admission pro hac vice upon its own motion or the motion of a
28 party if, after notice and a hearing, the Utah tribunal determines that admission pro hac
29 vice is inappropriate. Admission pro hac vice will be denied or, if granted, will be
30 revoked if the Utah tribunal determines that the process is being used to circumvent the
31 normal requirements for attorneys to practice law in Utah.

32 (e) **Eligibility.** A non-Utah licensed attorney who has been retained to represent a client
33 in an action or proceedings described in paragraph (b) may file a written application to
34 appear as counsel in that action or proceedings if the following conditions are met:

35 (1) The lawyer is not a Bar member;

36 (2) The lawyer is not a resident of Utah;

37 (3) The lawyer is not regularly employed in Utah;

38 (4) The lawyer is an active member licensed and in good standing in another state,
39 territory or insular possession of the United States; and

40 (5) The lawyer associates with an active Bar member in good standing ~~who is a Utah~~
41 ~~resident and whose law office is in Utah~~ (“local counsel”).

42 (f) **Factors in determining admission and revocation.** In determining whether to enter
43 or revoke the order of admission pro hac vice, the Utah tribunal may consider any
44 relevant information, including whether the non-Utah licensed attorney:

45 (1) is familiar with Utah rules of evidence and procedure, including applicable local
46 rules;

47 (2) is available to opposing parties;

48 (3) has particular familiarity with the legal affairs of the party relevant to the case;

49 (4) complies with the Utah tribunal’s rulings and orders;

50 (5) has caused delay or been disruptive; and

51 (6) has been disciplined in any other jurisdiction within the prior five years.

52 (g) **Application procedure.** A non-Utah licensed attorney seeking admission pro hac
53 vice must complete under oath and submit to the Bar an application form available
54 from the Bar. The applicant must complete a separate application for each matter in
55 which the applicant wants to appear. The application must include the following:

56 (1) identify the Utah tribunal for which the applicant wishes to appear, and the case
57 number or other identifying information for the matter in which the applicant
58 wishes to appear;

59 (2) the name of the party on whose behalf the applicant wishes to appear;

60 (3) the case or matter name, case or matter number, and Utah tribunal name for
61 other cases pending or closed within the prior five years for which the applicant
62 appeared pro hac vice;

63 (4) a statement whether the applicant is currently suspended or disbarred from the
64 practice of law in any state, or whether the applicant has been disciplined within the
65 prior five years, or is the subject of any pending disciplinary proceedings in any
66 state;

67 (5) a statement that the applicant submits to the disciplinary authority and
68 procedures of the Utah Office of Professional Conduct, is familiar with the rules or
69 procedure and evidence, including applicable local rules, will be available for
70 depositions, hearings, and conferences, and will comply with the Utah tribunal's
71 rulings and orders;

72 (6) the name, address, Bar identification number, telephone number, and email
73 address of the Bar member to serve as local counsel;

74 (7) a certificate of good standing from the jurisdiction or jurisdictions in which the
75 applicant is admitted dated no more than 60 days before the application date; and

76 (8) an application fee equal to the current dues paid by active members of the Bar for
77 the licensing year in which the application is filed. The fee must be paid to the Bar.

78 (h) **Limited exception to original and annual fee.** The application fee and annual fee
79 will be waived for:

80 (1) non-Utah licensed attorneys providing legal services without compensation or an
81 expectation of compensation through a charitable, religious, civic, community,
82 governmental, or educational organization in a matter designed primarily to address
83 the needs of people of limited means. A non-Utah licensed attorney seeking a fee
84 waiver to provide pro bono representation must include in the application a
85 verification that all clients represented in the action are of limited means and that no
86 attorney fees will be paid by the client.

87 (2) Attorneys who are employees of and representing the United States of America
88 or any of its departments or agencies.

89 (i) **Acknowledgment of Supporting Documentation and Receipt of Filing Fee.** Upon
90 receiving a complete application and fee, the Bar will issue an Acknowledgement of
91 Supporting Documentation and Receipt of Filing Fee ("**Acknowledgement**"). In making
92 the Acknowledgement, the Bar may attach copies or comment on any submitted
93 material that may be appropriate for a tribunal to consider with an application for pro
94 hac vice admission.

95 (j) **Filing with the Utah tribunal.** Once the Bar issues an Acknowledgement, local
96 counsel must file the Acknowledgement along with the following documents:

97 (1) a motion for admission pro hac vice;

98 (2) a copy of the application and all supporting documents;

99 (3) a copy of the certificate of good standing;

100 (4) a proposed order; and

101 (5) any submissions from the Bar together with proof of service on all parties in
102 accordance with the Utah Rules of Civil Procedure or, to the extent they differ from
103 the civil rules, the governing rules of the Utah tribunal.

104 (k) **Names and appearances.** The name, bar number, and address of local counsel must
105 appear on all notices, orders, pleadings and other documents filed in the case or
106 proceeding in which the non-Utah licensed attorney is appearing pursuant to this rule.
107 Local counsel is required to personally appear and participate in pre-trial conferences,
108 hearings and other proceedings before the Utah tribunal if the Utah tribunal deems the
109 appearances or participation appropriate. Local counsel must accept joint responsibility
110 with the non-Utah licensed attorney to the client, opposing counsel and parties and to
111 the Utah tribunal. Local counsel must continue as the local counsel of record in the case
112 unless another Bar member is substituted as local counsel.

113 (l) **Appearances by non-Utah licensed attorneys.** An applicant may not appear in a
114 proceeding subject to this rule or have the applicant's name placed on any pleadings or
115 proceedings documents until the Utah tribunal where the action is pending enters an
116 order granting the motion for pro hac vice.

117 (m) **Continuing duty to advise of changes in status.** A non-Utah licensed attorney
118 admitted pro hac vice has a continuing duty during the period of admission to
119 promptly advise the Bar of a disposition made for any pending disciplinary charges or
120 the institution of any new disciplinary proceedings or investigations. The Bar must then
121 advise any Utah tribunal where the attorney has been admitted pro hac of any new
122 disciplinary information. The non-Utah licensed attorney must promptly advise the Bar
123 if permission to appear pro hac vice under this rule is revoked by any Utah tribunal.

124 (n) **Annual renewal.** On or before the anniversary date of filing the initial application
125 with the Bar, a non-Utah licensed attorney must certify that the non-Utah licensed
126 attorney continues to act as counsel in the cause or that the cause has been finally
127 adjudicated. To renew, within 28 days of the anniversary date the non-Utah licensed
128 attorney must remit to the Bar an annual fee equal to the current dues paid by active
129 members of the Bar for the licensing year in which the renewal is filed.

130 (o) **Failure to renew.** Any non-Utah licensed attorney who continues to appear pro hac
131 vice in a cause and fails to pay the renewal fee set forth in paragraph (n), will be

132 suspended from appearing in any proceeding subject to the rule after 28 days of the
133 anniversary date. The Bar's executive director must notify the non-Utah licensed
134 attorney and local counsel of the suspension and file the notice with the Utah tribunal
135 that approved the pro hac vice application. The non-Utah licensed attorney may be
136 reinstated upon paying the fees set forth in paragraph (n) of this rule and a \$50 late
137 penalty. Upon paying all accrued fees and late penalty, the Executive Director will
138 reinstate the non-Utah licensed attorney and will certify reinstatement to the
139 appropriate Utah tribunal.

140 (p) **Appeals and other forms of review.** A non-Utah licensed attorney admitted in a
141 lower tribunal on a case or matter that is appealed must file a notice of appearance in
142 the appellate court or reviewing tribunal. A new application to the Bar is not required.

143 (q) **Applicable laws.** An attorney admitted pro hac vice must comply with and is
144 subject to Utah statutes, Supreme Court rules, the rules of the Utah tribunal in which
145 the attorney appears, and the Utah Code of Judicial Administration.

146 (r) **Tribal representation.** A Utah tribunal may allow a non-Utah licensed attorney who
147 is admitted and in good standing in another United States jurisdiction to appear for the
148 limited purpose of participating in a child custody proceeding under the Indian Child
149 Welfare Act of 1978, while representing a tribe, without being subject to the
150 requirements of this rule.

151

Rule 3.3

There were no public comments received for Rule 3.3.

1 **Rule 3.3. Candor toward the Tribunal.**

2 *Effective: 5/1/2019*

3 (a) A lawyer ~~must~~shall not knowingly or recklessly:

4 ~~(a)~~(1) make a false statement of fact or law to a tribunal or fail to correct a false
5 statement of material fact or law previously made to the tribunal by the lawyer; or

6 ~~(a)~~(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction
7 directly adverse to the position of the client and not disclosed by opposing counsel.

8 (b) A lawyer ~~must~~shall not offer evidence that the lawyer knows to be false. If a lawyer,
9 the lawyer's client, or a witness called by the lawyer has offered material evidence and
10 the lawyer comes to know of its falsity, the lawyer ~~must~~shall take reasonable remedial
11 measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to
12 offer evidence, other than the testimony of a defendant in a criminal matter, that the
13 lawyer reasonably believes is false.

14 (c) A lawyer who represents a client in an adjudicative proceeding and who knows that
15 a person intends to engage, is engaging, or has engaged in criminal or fraudulent
16 conduct related to the proceeding ~~must~~shall take reasonable remedial measures,
17 including, if necessary, disclosure to the tribunal.

18 (d) The duties stated in paragraphs (a), ~~(b)~~, and ~~(c)~~~~(b)~~ continue to the conclusion of the
19 proceeding and apply even if compliance requires disclosure of information otherwise
20 protected by Rule 1.6.

21 (e) In an ex parte proceeding, a lawyer ~~must~~shall inform the tribunal of all material
22 facts known to the lawyer that will enable the tribunal to make an informed decision,
23 whether or not the facts are adverse.

24

25 **Comment**

26 [1] This Rule governs the conduct of a lawyer who is representing a client in the
27 proceedings of a tribunal. See Rule 1.0(q) for the definition of "tribunal." It also applies
28 when the lawyer is representing a client in an ancillary proceeding conducted pursuant
29 to the tribunal's adjudicative authority, such as a deposition. Thus, for example,
30 paragraph ~~(b)(a)(3)~~ requires a lawyer to take reasonable remedial measures if the
31 lawyer comes to know that a client who is testifying in a deposition has offered
32 evidence that is false or is reckless with respect to its truth.

33 [2] This Rule sets forth the special duties of lawyers as officers of the court to avoid
34 conduct that undermines the integrity of the adjudicative process. A lawyer acting as an
35 advocate in an adjudicative proceeding has an obligation to present the client's case
36 with persuasive force. Performance of that duty while maintaining confidences of the
37 client, however, is qualified by the advocate's duty of candor to the tribunal.
38 Consequently, although a lawyer in an adversary proceeding is not required to present
39 an impartial exposition of the law or to vouch for the evidence submitted in a cause, the
40 lawyer must not allow the tribunal to be misled by false statements of law or fact or
41 evidence that the lawyer knows to be false.

42 **Representations by a Lawyer**

43 [3] The Utah rule is different from the ABA Model Rule. In *In re Larsen*, 2016 UT 26, 379
44 P.3d 1209, the Utah Supreme Court held that the former rule's plain language required
45 finding actual knowledge before an attorney could be found to have violated the rule,
46 and that language in former Comment [3] permitted finding a violation on something
47 less than actual knowledge. The amendments to Rule 3.3(a), and to Comments [2], [4],
48 [5] and [9] permit finding a violation of the rule if an attorney recklessly, as defined in
49 Rule 1.0(n), makes a false statement of law or fact or fails to disclose controlling
50 authority.

51 **Legal Argument**

52 [4] Legal argument based on a knowingly or recklessly false representation of law
53 constitutes dishonesty toward the tribunal. A lawyer is not required to make a

54 disinterested exposition of the law, but must recognize the existence of pertinent legal
55 authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to
56 disclose directly adverse authority in the controlling jurisdiction that has not been
57 disclosed by the opposing party. The underlying concept is that legal argument is a
58 discussion seeking to determine the legal premises properly applicable to the case.

59 **Offering Evidence**

60 [5] Paragraph(b) requires that the lawyer refuse to offer evidence that the lawyer knows
61 to be false, regardless of the client's wishes. This duty is premised on the lawyer's
62 obligation as an officer of the court to prevent the trier of fact from being misled by false
63 evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the
64 purpose of establishing its falsity.

65 [6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to
66 introduce false evidence, the lawyer should seek to persuade the client that the evidence
67 should not be offered. If the persuasion is ineffective and the lawyer continues to
68 represent the client, the lawyer must refuse to offer the false evidence. If only a portion
69 of a witness's testimony will be false, the lawyer may call the witness to testify but may
70 not elicit or otherwise permit the witness to present the testimony that the lawyer
71 knows is false.

72 [7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense
73 counsel in criminal cases. In some jurisdictions, however, courts have required counsel
74 to present the accused as a witness or to give a narrative statement if the accused so
75 desires, even if counsel knows that the testimony or statement will be false. The
76 obligation of the advocate under the Rules of Professional Conduct is subordinate to
77 such requirements. See also Comment [9].

78 [8] The prohibition against offering false evidence only applies if the lawyer knows that
79 the evidence is false. A lawyer's reasonable belief that evidence is false does not
80 preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false,

81 however, can be inferred from the circumstances. See Rule 1.0(g). Thus, although a
82 lawyer should resolve doubts about the veracity of testimony or other evidence in favor
83 of the client, the lawyer cannot ignore an obvious falsehood.

84 [9] Although paragraph (b) only prohibits a lawyer from offering evidence the lawyer
85 knows to be false, it permits the lawyer to refuse to offer testimony or other proof that
86 the lawyer reasonably believes is false. Offering such proof may reflect adversely on the
87 lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's
88 effectiveness as an advocate. Because of the special protections historically provided
89 criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the
90 testimony of such a client where the lawyer reasonably believes but does not know that
91 the testimony will be false. Unless the lawyer knows the testimony will be false, the
92 lawyer must honor the client's decision to testify. See also Comment [7].

93 **Remedial Measures**

94 [10] Having offered evidence in the belief that it was true, a lawyer may subsequently
95 come to know that the evidence is false. Or, a lawyer may be surprised when the
96 lawyer's client, or another witness called by the lawyer, offers testimony the lawyer
97 knows to be false, either during the lawyer's direct examination or in response to cross-
98 examination by the opposing lawyer. In such situations or if the lawyer knows of the
99 falsity of testimony elicited from the client during a deposition, the lawyer must take
100 reasonable remedial measures. In such situations, the advocate's proper course is to
101 remonstrate with the client confidentially, advise the client of the lawyer's duty of
102 candor to the tribunal and seek the client's cooperation with respect to the withdrawal
103 or correction of the false statements or evidence. If that fails, the advocate must take
104 further remedial action. If withdrawal from the representation is not permitted or will
105 not undo the effect of the false evidence, the advocate must make such disclosure to the
106 tribunal as is reasonably necessary to remedy the situation, even if doing so requires the
107 lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the

108 tribunal then to determine what should be done-making a statement about the matter to
109 the trier of fact, ordering a mistrial or perhaps nothing.

110 [11] The disclosure of a client's false testimony can result in grave consequences to the
111 client, including not only a sense of betrayal but also loss of the case and perhaps a
112 prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the
113 court, thereby subverting the truth-finding process which the adversary system is
114 designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood
115 that the lawyer will act upon the duty to disclose the existence of false evidence, the
116 client can simply reject the lawyer's advice to reveal the false evidence and insist that
117 the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a
118 party to fraud on the court.

119 **Preserving Integrity of Adjudicative Process**

120 [12] Lawyers have a special obligation to protect a tribunal against criminal or
121 fraudulent conduct that undermines the integrity of the adjudicative process, such as
122 bribing, intimidating or otherwise unlawfully communicating with a witness, juror,
123 court official or other participant in the proceeding, unlawfully destroying or
124 concealing documents or other evidence or failing to disclose information to the
125 tribunal when required by law to do so. Thus, paragraph (c)(~~b~~) requires a lawyer to take
126 reasonable remedial measures, including disclosure if necessary, whenever the lawyer
127 knows that a person, including the lawyer's client, intends to engage, is engaging or has
128 engaged in criminal or fraudulent conduct related to the proceeding.

129 **Duration of Obligation**

130 [13] A practical time limit on the obligation to rectify false evidence or false statements
131 of law and fact has to be established. The conclusion of the proceeding is a reasonably
132 definite point for the termination of the obligation. A proceeding has concluded within
133 the meaning of this Rule when a final judgment in the proceeding has been affirmed on
134 appeal or the time for review has passed.

135 Ex Parte Proceedings

136 [14] Ordinarily, an advocate has the limited responsibility of presenting one side of the
137 matters that a tribunal should consider in reaching a decision; the conflicting position is
138 expected to be presented by the opposing party. However, in any ex parte proceeding,
139 such as an application for a temporary restraining order, there is no balance of
140 presentation by opposing advocates. The object of an ex parte proceeding is
141 nevertheless to yield a substantially just result. The judge has an affirmative
142 responsibility to accord the absent party just consideration. The lawyer for the
143 represented party has the correlative duty to make disclosures of material facts known
144 to the lawyer and that the lawyer reasonably believes are necessary to an informed
145 decision.

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