

# Duties to Opposing Party

- 1) Don't obstruct the other party's investigation or destroy evidence
- 2) Don't falsify evidence or put a witness on the stand who will lie
- 3) Don't ignore a judge's order unless you're challenging the legality of that order and have a good faith basis to believe that it is invalid
- 4) Don't make frivolous discovery demands and try to live up to the discovery demands made of you
- 5) Don't bring up, at trial, facts that are irrelevant or overly prejudicial or improper issues
- 6) Don't use the disciplinary process to intimidate or harass your opponent

# Candor to the Court

## **This includes the duties to:**

- Avoid making false statements of fact or law in court
- Avoid using misleading case law in a brief
- Disclose a case or law that is helpful to the opposition, if the case or law is binding
- Remedy falsities that have already been presented in the case by that attorney
- Avoid entering evidence that the lawyer knows is false

*note: If the lawyer thinks it may be false, but doesn't know whether it's true or false, he has a choice as to whether to enter it*

# False Testimony – The “Perplexing Problem of Perjury”

Rule for witnesses and/or civil defendants:

One MAY NOT allow a witness to testify if the lawyer knows that the witness will lie.

If the attorney is unsure as to whether the witness will lie, she may refuse to call the witness

If it is a criminal defendant who wants to lie on the stand, there is a problem

(A criminal defendant has a Constitutional right to testify on his own behalf)

## False Testimony –

### The “Perplexing Problem of Perjury” (cont.)

#### **Some options for the attorney in such as case:**

- Convince the defendant not to testify or not to testify falsely
- Try to withdraw (may be refused in mid-trial because it could be prejudicial to the client’s case)
- Allow the defendant to testify in the “narrative”
- Some states allow the attorney to question the defendant normally even if he will lie

QUIZ TIME!