

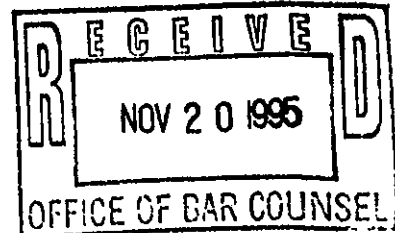
STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 15th day of November, 1995, the following order was made and entered:

**Lawyer Disciplinary Board,
Complainant**

vs.) No. 22714

**Eugene M. Simmons, a suspended member
of The West Virginia State Bar, Respondent**



On a former day, to-wit, August 14, 1995, came the complainant, the Hearing Panel Subcommittee of the Lawyer Disciplinary Board, by Elisabeth H. Rose, its chairperson, and presented to the Court, pursuant to rule 3.10, Rules of Lawyer Disciplinary Procedure, its written recommended disposition in the above-captioned proceeding, recommending (1) that the respondent's license to practice law in the State of West Virginia be suspended for an additional period of one month, said suspension retroactive to the 9th day of February, 1995, the date upon which the respondent's license to practice law in the State of West Virginia could have been reinstated from a previous suspension; (2) that all conditions previously imposed on respondent's petition for reinstatement shall apply to this suspension (a) that respondent be publicly reprimanded immediately upon reinstatement and (b) that respondent be required to pass the Multi-State Professional Responsibility Examination before his license to practice law in the State of West Virginia can be reinstated; (3) that respondent be required to reimburse the Lawyer Disciplinary Board for the costs and expenses incurred in the hearing and investigation of this matter in the amount of One Thousand Five Hundred Forty-One Dollars and Seventy-Five Cents (\$1,541.75); and (4) that respondent participate in a

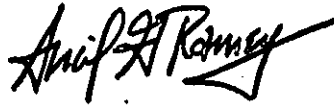
mentorship program under the supervision of an attorney selected by the Office of Disciplinary Counsel and respondent for a period of one year as a condition of the reinstatement of his license to practice law in the State of West Virginia.

There being heard neither consent nor objection from the respondent or the Office of Disciplinary Counsel pursuant to Rule 3.11, Rules of Lawyer Disciplinary Procedure, it is hereby ordered that the written recommended disposition of the Hearing Panel Subcommittee of the Lawyer Disciplinary Board be, and it hereby is, adopted. It is therefore ordered (1) that the respondent's license to practice law in the State of West Virginia be suspended for an additional period of one month, said suspension retroactive to the 9th day of February, 1995, the date upon which the respondent's license to practice law in the State of West Virginia could have been reinstated from a previous suspension; (2) that all conditions previously imposed on respondent's petition for reinstatement shall apply to this suspension (a) that respondent be publicly reprimanded immediately upon reinstatement and (b) that respondent be required to pass the Multi-State Professional Responsibility Examination before his license to practice law in the State of West Virginia can be reinstated; (3) that respondent reimburse the Lawyer Disciplinary Board for the costs and expenses incurred in the hearing and investigation of this matter in the amount of One Thousand Five Hundred Forty-One Dollars and Seventy-Five Cents (\$1,541.75); and (4) that respondent participate in a mentorship program under the supervision of an attorney selected by the Office of Disciplinary Counsel and respondent for a period of one year as a condition of the reinstatement of his license to practice law in the State of West Virginia.

Service of a copy of this order upon all parties shall constitute notice of the contents herein.

A True Copy

Attest:



Clerk, Supreme Court of Appeals

FILE COPY

**DO NOT REMOVE
FROM FILE**

BEFORE THE LAWYER DISCIPLINARY BOARD
OF THE
STATE OF WEST VIRGINIA

FILED

AUG 14 1995

ANCIL G. RAMEY, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

IN RE: EUGENE M. SIMMONS, a suspended member
of the West Virginia State Bar

I.D. Nos. 91-01-139
91-01-391

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED DISCIPLINE

I.

PROCEDURAL HISTORY

Eugene M. Simmons is a suspended member of the West Virginia State Bar who has practiced primarily in Pocahontas County, West Virginia.

The Lawyer Disciplinary Board of the State of West Virginia (hereinafter "Board") has filed a Statement of Charges against Eugene M. Simmons (hereinafter "Respondent") which contains two counts. At the time this statement of charges was filed, the Respondent was suspended from the practice of law in the state of West Virginia pursuant to a six-month suspension previously imposed by the West Virginia Supreme Court of Appeals (see Ethics v. Simmons, 393 S.E.2d 894 W.Va. 1990). The six-month suspension has expired; although the Respondent has petitioned for reinstatement, proceedings on the petition were stayed pending the hearing on the charges herein.

II.

Count I - The Rinehart Matter

1) Respondent has been charged with violation of Rules 1.3, 1.4(a), 1.4(b), 1.16(a), and 1.16(d), of the Rules of Professional Conduct pursuant to a complaint filed

against him on April 19, 1991, by Joan M. Rinehart. In addition, Disciplinary Counsel alleged that Respondent violated Rule 8.1(a) and (b) of the Rules of Professional Conduct.¹

2) In early 1989, Joan M. Rinehart ("Complainant" herein) retained Respondent to file a partition suit against her brother, Joseph Michael Rinehart. The suit involved seven hundred and twenty-one (721) acres in Pocahontas County, West Virginia. At their initial meeting, Complainant paid Respondent a retainer fee of one hundred dollars (\$100.00).

3) Between March and November, 1989, Respondent negotiated with Mr. Rinehart's attorney in an effort to settle the matter before filing suit. When the negotiations failed, Respondent advised that he would file the partition suit.

4) By letter dated January 4, 1990, Respondent advised Complainant that he required a payment of One Thousand Dollars (\$1,000.00) from her to cover court costs and preliminary attorney's fees. He enclosed with that letter a rough draft of the partition suit and asked Complainant to fill in the names of the parties, make any necessary changes and return the document to him. In February, 1990, Complainant sent Respondent a check for One Thousand Dollars (\$1,000.00) and returned the draft of the partition suit.

5) Complainant called Respondent a number of times between February, 1990, and February, 1991, to inquire as to the status of the suit.

6) Respondent did not file suit until December, 1990, at which time his license to practice law was suspended. Respondent did not notify Complainant of his suspension, as required by the By-Laws of the West Virginia State Bar.

7) Between January and March, 1991, Complainant attempted unsuccessfully to contact Respondent on several occasions by telephone to find out the status of her partition suit. Her calls were not returned.

¹ See Exhibit A attached hereto for full text of cited Rules.

8) On March 19, 1991, Complainant sent Respondent a letter terminating his employment and asking him to send her file and the \$1,000.00 to her new attorney, Walter Weiford, Esquire. Respondent did not return the file or the money.

9) On January 19, 1992, Complainant retained Marlinton attorney, David Arrington, to represent her in the partition suit. Shortly thereafter, Mr. Arrington met with Respondent and retrieved Complainant's file.

10) At that time, Respondent told Mr. Arrington that he would be willing to refund any portion of the fee that Complainant and Mr. Arrington felt was necessary. However, Complainant has not received any of the money paid by her to Respondent in February, 1990.

11) Although Complainant filed an ethics complaint with the State Bar in April 19, 1991, Respondent did not reply to the complaint until March 25, 1992. In the interim, Disciplinary Counsel met with Respondent on or about June 26, 1991, and informed him that he needed to provide a written response to the ethics complaint. When Respondent failed to submit the response, Disciplinary Counsel sent a letter to him on August 6, 1991, asking him to reply to the complaint by August 27, 1991. Respondent again failed to submit a response. On March 11, 1992, Disciplinary Counsel sent a second letter instructing Respondent to reply to the complaint on or before March 26, 1992. Respondent's reply was received on March 25, 1992.

12) The parties to the partition suit decided that the property could not be divided equally and agreed to sell the land. In May, 1993, the property was sold for Four Hundred Ninety-Five Thousand dollars (\$495,000).

Count II - The Bowling Matter

1) Respondent has been charged with violation of Rules 1.3, 1.4(a), and 1.16(d) of the Rules of Professional Conduct. Additionally, Disciplinary Counsel alleged that Respondent violated Rule 8.1(a) and (b) of the Rules of Professional Conduct pursuant to complaint filed on November 18, 1991, by Francis M. Bowling ("Complainant" herein).

2) In 1983, Complaint retained Respondent to represent her in a medical malpractice action against Dr. Conrad Tamea. Between 1984 and 1990, the case was set for trial a number of times but was continued either at the request of Dr. Tamea or Respondent.

3) On August 27, 1990, Dr. Tamea brought on for hearing a Motion to Dismiss or, in the alternative, a Motion to Compel, the subjects of which were difficulties Dr. Tamea alleged to have experienced in obtaining discovery from the Plaintiff. A review of that motion produces the following:

- (a) In response to Defendant's Interrogatory seeking information concerning expert witnesses, the Plaintiff designated (In Answers filed on March 22, 1984) three experts: Dr. Hite; Dr. Soriano; and Dr. Gomez.
- (b) In response to Interrogatories seeking the facts and opinions held by each expert, the Plaintiff stated "Facts surrounding Plaintiff's injuries" and advised that a summary of the grounds of each opinion would be available upon deposition.
- (c) On November 8, 1985, the Defendant moved for an order compelling the Plaintiff to provide full and complete answers to the Interrogatories seeking information concerning expert witnesses. Respondent entered into an agreed order allowing thirty days from the entry thereof in which to provide responses. No responses were received.
- (d) On May 22, 1986, Defendant again moved to compel the Plaintiff to respond to the expert witness interrogatories. The Parties entered into a second agreed order. Responses were not received.

- (e) On June 27, 1988, the Defendant filed for dismissal, pursuant to Rule 41(b) of the West Virginia Rules of Civil Procedure and under Rules 47(a)(3) for failure to respond to discovery. In response, the Plaintiff made Dr. Soriano available for deposition. In the deposition, Dr. Soriano indicated that he did not consider himself qualified to render an expert opinion against Dr. Tamea.
- (f) On June 12, 1990, the Defendant again moved to compel full and complete responses to his expert witness interrogatories with respect to Dr. Gomez, inasmuch as attempts to schedule Dr. Gomez's deposition had been unsuccessful. Pursuant to that motion, Respondent served incomplete responses.

4) The Circuit Court of Greenbrier County found Dr. Tamea's Motion meritorious and ordered Complainant to make Dr. Jose Gomez available for a discovery deposition on or before October 1, 1990.

5) It is not clear to the Subcommittee from the evidence whether the difficulty in scheduling Dr. Gomez' deposition was due to lack of diligence on Respondent's part or lack of a desirable opinion by Dr. Gomez; in any event, Dr. Gomez was not made available for a deposition by the prescribed date, and the plaintiff had no expert witness.

6) On October 16, 1990, the Circuit Court of Greenbrier County dismissed Complainant's case with prejudice. Complainant was not notified by Respondent that her case had been dismissed.

7) Respondent testified that he informed Complainant that the case would be dismissed if the testimony of Dr. Gomez could not be obtained; Respondent refutes this.

8) In December, 1990, Respondent's license to practice law was suspended for six months by the West Virginia Supreme Court of Appeals.

9) Just prior to the date Respondent's suspension was about to go into effect, he met with Complainant in his office. During the meeting, Respondent did not mention that Complainant's case had been dismissed; instead, Respondent advised that the case would be transferred to another lawyer because of Respondent's suspension.

10) From that time until the fall of 1991, Complainant did not hear from Respondent or anyone else regarding her case. She then contacted Walter Weiford, Esquire, who at that time was Prosecuting Attorney of Pocahontas County. Complainant sought advice from Mr. Weiford on obtaining her file and her father's will, which was also in Respondent's possession.² Mr. Weiford checked with the Circuit Court of Greenbrier County and found that Complainant's medical malpractice case had been dismissed.

11) Complainant then filed an ethics complaint with the West Virginia State Bar. On November 18, 1991, Disciplinary Counsel forwarded a copy of the complaint to Respondent and asked him to reply in writing by December 9, 1991. When Respondent failed to do so, Disciplinary Counsel contacted him on the phone on several occasions and asked him to reply to the complaint. Each time, Respondent promised to send a response but failed to do so. On March 12, 1992, Disciplinary Counsel sent Respondent another letter telling him to reply on or before March 26, 1992 or the matter would be taken before the Investigative Panel. Respondent's reply was finally received by the State Bar on March 24, 1992.

Respondent's Motion to Dismiss

Respondent has moved to dismiss the Rinehart and Bowling charges. The bases of the Respondent's motion are: (1) Disciplinary Counsel has failed to prove the charges by full, clear and preponderating evidence; (2) Disciplinary Counsel's delay in prosecuting the charges against Respondent constitutes laches; as a result of the delay in

² Respondent's alleged failure to return Complainant's father's will is included in the statement of charges. The Subcommittee finds the evidence as to this allegation to be less than clear and convincing and declines to consider the same.

prosecution, Respondent has been prejudiced or disadvantaged by the death of a witness and loss of material evidence.

The Office of Disciplinary Counsel responded to the Motion to Dismiss by arguing that the Bowling and Rinehart charges were timely filed. As to the laches issue, Disciplinary Counsel noted that this issue had not been raised originally; nonetheless, the defense of laches is not applicable pursuant to the holding in Committee on Legal Ethics of the West Virginia State Bar v. Pence, 240 S.E.2d 668 (1977).

The basis of Respondent's assertion that he has been prejudiced by the delay in prosecuting the charges against him is the death in 1990 of his secretary. Respondent states that his secretary would have been a key witness in his defense of these matters. Furthermore, she had knowledge of the contents and location of material files; after her death, Respondent was unable to find all of the materials needed by him or requested by the State Bar in conjunction with these proceedings.

Disciplinary Counsel argued that Respondent is estopped from asserting the defense of laches because he participated in conduct which caused or contributed to the delay in the prosecution of the charges against him. He did not respond timely to the complaints. He did not timely acknowledge the receipt of the first statement of charges. He did not timely answer the second statement of charges. He did not timely complete his petition for reinstatement by virtue of his failing to file the required questionnaire before December 9, 1994. He did not comply with discovery requested herein. It should be noted that a second statement of charges was required after Respondent moved to dismiss the first statement of charges on the ground that the statement of charges was signed by Stephen Jory. Respondent stated that he was involved in a legal matter with a lawyer working in Mr. Jory's office; therefore, the first statement of charges was rendered invalid by virtue of this conflict of interest. The motion to dismiss on this ground was denied; however, the matter was referred to a new investigative panel which generated the second statement of charges.

The Subcommittee finds that the Rinehart and Bowling charges were timely filed. The Rinehart charges were filed on April 19, 1991; the Bowling charges were filed on November 18, 1991.

Rule 2.14 of the Rules of Lawyer Disciplinary Procedure states:

"Any complaint filed more than two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of a violation of the Rules of Professional Conduct, shall be dismissed by the Investigative Panel."

The Subcommittee finds that any violation which occurred in the Rinehart matter occurred no earlier than February, 1990; therefore, the filing of a complaint on April 19, 1991, was well within the two-year period.

In the Bowling Matter, it is possible to infer that violations occurred as early as 1984. However, the Subcommittee finds no reason to charge Complainant with the burden of recognizing a violation until the fall of 1991. Since her complaint was filed on November 18, 1991, it was timely.

As to Respondent's laches argument, the Subcommittee has concern over the length of time that elapsed between the filing of charges and the hearing on the same. However, the Subcommittee finds that Respondent contributed significantly to the delay by his repeated untimely responses, or lack of responses, to the charges and other procedural overtures. (The Subcommittee does not find that the delay created by Respondent's motion to dismiss the first statement of charges on the ground of conflict of interest is chargeable to Respondent). As to the Respondent's assertion that he suffered prejudice and disadvantage as a result of the delay, the Subcommittee acknowledges his argument that his secretary would have been a significant witness. Respondent argues that, had the hearing on these charges been held sooner, his secretary could have testified and located pertinent records. However, Respondent's secretary passed away in 1990, prior to the institution of the charges against Mr. Simmons. Therefore, any disadvantage resulting from her death

occurred well before the delay in question. As to the Respondent's argument that the delay carried with it the consequence of his being unable to locate relevant files, the gist of his assertion is that he relied on his secretary for the maintenance and location of his files; without her, he had no capacity to locate the same. The Subcommittee finds that Respondent is charged with responsibility for his files and their contents (See Rules 1.15, 1.6, and 5.3). The Subcommittee fully understands and sympathizes with the impact caused by the loss of valuable support personnel. Nonetheless, this cannot be relied upon as a valid excuse for failure to locate needed file materials.

CONCLUSIONS OF LAW

Count I

1) By not filing a lawsuit for a period of ten months after accepting a retainer to do so and by other delays, Respondent violated **Rule 1.3** of the Rules of Professional Conduct: "A lawyer shall act with reasonable diligence and promptness in representing a client."

2) By not promptly returning phone calls or otherwise communicating with the Complainant, Respondent violated **Rule 1.4 (a) and 1.4 (b)** of the Rules of Professional Conduct:

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly reply with reasonable request for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

3) By doing nothing upon Complainant's request that Respondent no longer represent her interests, Respondent violated **Rule 1.16(a)**:

[A] lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (a) the representation will result in violation of the rules of professional conduct or other law; [or]
- (b) the lawyer is discharged.

4) By failing to promptly return the file, by not taking steps to protect the Complainant's interests, by not giving reasonable notice to the client, by not surrendering Complainant's file and refunding any advance payment fee that was not earned in a reasonable time, Respondent violated **Rule 1.16 (d)**:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as ... surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned ...

5) By not promptly notifying Complainant of his suspension by registered or certified mail, by not obtaining substitute counsel before the effective date of his suspension, and by other acts, Respondent violated Article VI, Section 28 of the By-Laws of the West Virginia State Bar.

6.) By failing to respond in a timely manner to requests by Disciplinary Counsel and by stating that he would timely comply, Respondent violated **Rule 8.1(b)**:

[A] lawyer in connection with ... a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to respond to lawful demand for information from a ... disciplinary authority ...

The Subcommittee finds that the foregoing violations were proven by clear and convincing evidence.

Count II

1) By not timely obtaining a medical opinion concerning Complainant's case and by not complying with the Order granting Defendant's Motion to Compel, the

Respondent has violated **Rule 1.3** of the Rules of Professional Conduct: "A lawyer shall act with reasonable diligence and promptness in representing a client."

2) By not communicating with the Complainant and by not promptly informing her that her case was dismissed, Respondent violated **Rule 1.4(a)** of the Rules of Professional Conduct: "A lawyer shall keep a client reasonably informed about the status of a matter and promptly reply with reasonable requests for information."

3) By not returning Complainant's file to her, Respondent violated **Rule 1.16(d)**: "[U]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as ... surrendering papers and property to which the client is entitled and refunding any advanced payment of fee that has not been earned.

4) By not promptly notifying Complainant by registered or certified mail of his suspension, Respondent violated Article VI, 28 of the By-Laws of the West Virginia State Bar.

5) By not promptly responding to Disciplinary Counsel, Respondent violated **Rules 8.1(b)**, supra.

The Subcommittee finds that the foregoing violations have been proven by clear and convincing evidence.

As to Disciplinary Counsel's assertion that Respondent violated Rule 8.1(a) by knowingly making misrepresentations or false statements of fact to Disciplinary Counsel, the Subcommittee finds that some of Respondent's statements and representations to Disciplinary Counsel have been contradictory and unsupported by documentary evidence. The Subcommittee opines that these communications by Respondent indeed come very close to violations of Rule 8.1(a); however, under the comprehensive circumstances existing herein, the Subcommittee declines to find that the subjects of the misrepresentations meet the definition of "material fact" as contemplated by Rule 8.1(a) and, accordingly, finds no violation of the same.

PROPOSED RECOMMENDED DISCIPLINE

At the time of these charges, Respondent was a suspended member of the West Virginia State Bar and was subjected to a public reprimand by the West Virginia Supreme Court of Appeals for failing to prepare final orders in forty-two criminal cases before leaving the office of Prosecuting Attorney of Pocahontas County; for failing to submit several orders for arraignments, changes of plea, and pretrial or status conferences in the same forty-two cases; and for failing to return timely a client's file in 1989 after the client terminated his representation (see Committee on Legal Ethics v. Simmons, Case No. 22131, filed May 20, 1994).

Inasmuch as Respondent is not charged with a pattern and practice of neglect, the Subcommittee does not incorporate these previous disciplinary actions into its recommended discipline, deeming them issues for consideration in conjunction with his petition for reinstatement.

Once a finding of lawyer misconduct has been made, the Lawyer Disciplinary Board is to consider the following factors pursuant to Rule 3.16 of the Rules of Lawyer Disciplinary Procedure:

- (1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) whether the lawyer acted intentionally, knowingly, or negligently;
- (3) the amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) the existence of any aggravating or mitigating factors.

In the Rinehart matter, the Subcommittee finds that Respondent violated a duty to his client by his delay in filing suit and his refusal to return to his client the file and appropriate refund of retainer.

In the Bowling matter, Respondent violated his duty to his client by failing to keep his client reasonably informed, and by not returning her file to her.

He also failed in both matters to promptly notify his clients of his suspension.

By Respondent's failure to promptly reply to requests for information by Disciplinary Counsel, he violated a duty to the public, the legal system and to the profession.

As to the amount of actual or potential injury caused by Respondent's misconduct, the same is quantifiable to a limited extent in the Rinehart matter. There is no indication in the record that the delay of Respondent in filing the partition suit negatively affected the outcome. Likewise, there is no evidence that Respondent refunded to his client any portion of the retainer. However, it is not clear from the record that all of the retainer should have been refunded or, if any portion thereof was subject to refund, what the amount of that portion is. Therefore, the Subcommittee finds that the actual or potential injury caused by Respondent's misconduct is minimal.

In the Bowling matter, the Subcommittee has no way of ascertaining the amount of damage caused by Respondent's handling of his client's lawsuit. The Subcommittee cannot speculate on the potential value of Mrs. Bowling's medical malpractice claim without appropriate evidence of the same. Had appropriate expert witnesses been retained in a timely manner, the case may have had value. On the other hand, Respondent's inability to retain appropriate expert witnesses may be a reflection of a lack of merit. This uncertainty, however, does not diminish the effect on Mrs. Bowling of Respondent's failure to appropriately apprise her of the status of her case.

The Subcommittee does not find that the Respondent was motivated by any evil intent or greed. Rather, the Subcommittee finds that Respondent apparently operates in a perpetual state of confusion and disorganization.

Based on the factors to be considered, the Subcommittee recommends that Respondent's license to practice law be suspended for a period of one month, which suspension be deemed effective on the earliest date Respondent could have been reinstated

absent the present charges, which date is February 9, 1995. This discipline is not intended as a reflection of any lack of consideration on the part of the Subcommittee of the severity of the effects of Respondent's misconduct. The Subcommittee frankly feels that if Respondent's suspension from the practice of law since 1990 has not positively affected Respondent's negligent habits, no additional sanctions in this case will have that effect.

All conditions previously imposed on Respondent's petitioning for reinstatement shall apply to this suspension. Respondent must pay the costs incurred by the Board in this proceeding. Finally, the Subcommittee recommends that Respondent participate, for a period of one year as a condition to his reinstatement, in a mentoring program under the supervision of an attorney selected by disciplinary counsel and Respondent.

Elisabeth H. Rose

Elisabeth H. Rose, Esquire

C. Blaine Myers, Esquire

C. Blaine Myers, Esquire

Debra K. Sullivan, Esquire

Debra K. Sullivan

EXHIBIT A

Rule 1.3 Diligence

A lawyer should act with reasonable diligence and promptness in representing a client.

Rule 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.16 Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of profession conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advanced payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

Rule 8.1 Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) Knowingly make a false statement of material fact; or
- (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.