

Final

Rhode Island Supreme Court Ethics Advisory Panel Op. 2026-01 Issued January 8, 2026

FACTS

The inquiring attorney represented a certain client, which representation terminated on November 19, 2025. The now-former client has asked the inquiring attorney to destroy all emails and other records he or she sent to the inquiring attorney during the representation (the “Files”). The inquiring attorney is unsure whether he or she is required under the Rules of Professional Conduct to heed the former client’s request and destroy the Files.

ISSUE PRESENTED

The inquiring attorney asks whether he or she is required under the Rules of Professional Conduct to destroy the Files?

OPINION

It is the Panel’s opinion that the inquiring attorney is not required under the Rules of Professional Conduct to destroy the Files.

REASONING

An attorney’s duties to his or her client upon termination of a representation are set forth in Rule 1.16(d):

(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 advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

This Rule establishes two (2) principles relevant here. First, it provides that upon termination of a representation the attorney “shall . . . surrender[] papers and property to which the client is entitled” “A client-file is the property of the client.” Rhode Island Supreme Court Ethics Advisory Panel Op. 2010-06. Thus, upon termination of a representation the client is entitled to receive “the contents of the [client’s] file excluding the attorney’s work product.” Rhode Island Supreme Court Ethics Advisory Panel Op. 92-88. Attorney work product in this context includes filings, memoranda, expert reports, mental impressions, interviews, and correspondence prepared by the attorney, see Rhode Island Supreme Court Ethics Advisory Panel Op. 90-19, as well as “the lawyer’s own personal notes that are unrelated to legal analysis such as times records, notes of conversations with the client, and other record keeping documents.” Rhode Island Supreme Court Ethics Advisory Panel Op. 93-76. Attorney work product does not include papers and other

records the attorney receives from the client during the representation or any documents developed or derived therefrom, however—even if the attorney relied upon them in prosecuting the matter on the client’s behalf. See Rhode Island Supreme Court Ethics Advisory Panel Op. 93-84 (requiring the inquiring attorney to return certain documents to the client following the termination of the representation because the client had provided them to the inquiring attorney during the course of the representation).

Second, Rule 1.16(d) establishes that upon termination of a representation the attorney “may retain papers relating to the client to the extent permitted by other law.” In this vein, the Panel has observed that G.L. 1956 § 8-14-2 requires attorneys to retain civil case files for a period of seven (7) years after “the disposition of [the] case or matter” See Rhode Island Supreme Court Ethics Advisory Panel Op. 94-09 (recognizing the applicability of G.L. 1956 § 8-14-2 to Rhode Island attorneys); Rhode Island Supreme Court Ethics Advisory Panel Op. 92-10 (same); see also Rule 1.19, Comment [1] (same). Similarly, Rule 1.19(a) also requires attorneys to retain certain financial records for a period of “seven (7) years after the events which they record” To comply with these requirements, the Panel has endorsed the practice of attorneys photocopying the contents of a client file before turning it over to the client. See Rhode Island Supreme Court Ethics Advisory Panel Op. 93-84.

In this case, the inquiring attorney’s representation of the client in question terminated on November 19, 2025. At that point, the inquiring attorney was required under Rule 1.16(d) to return to the client the client’s file excluding the inquiring attorney’s own work product. See Rhode Island Supreme Court Ethics Advisory Panel Op. 92-88. Among the papers returned to the client should have been the Files, even if the inquiring attorney relied on them during the representation, because they were provided by the client to the inquiring attorney during the course of the representation. See Rhode Island Supreme Court Ethics Advisory Panel Op. 93-84.

Concomitantly, however, the inquiring attorney must retain a copy of the client’s file for a period of seven (7) years following the termination of the matter to which it pertained pursuant to G.L. 1956 § 8-14-2.¹ See Rhode Island Supreme Court Ethics Advisory Panel Op. 94-09; Rhode Island Supreme Court Ethics Advisory Panel Op. 92-10. Following completion of the seven (7) year retention period, the inquiring attorney may, but need not, destroy his or her copy of the file. See Rhode Island Supreme Court Ethics Advisory Panel Op. 94-09; see also Rule 1.16(d).

¹ The Panel assumes for the purpose of this Advisory Opinion that the matter in question was civil in nature, not criminal.