

Final

Rhode Island Supreme Court Ethics Advisory Panel Op. 2026-03 Issued April 9, 2026

FACTS

The inquiring attorney currently represents a certain business entity licensed by the Department of Business Regulation (the “DBR”). Prior to the representation, the business entity provided products to other businesses in violation of its DBR license. The business entity was never paid for these activities. Now under new management, the business entity has directed the inquiring attorney to collect the cost of the unpaid activities through the small claims process. The inquiring attorney does not believe the business entity’s collection request constitutes potentially illegal or fraudulent conduct but is unsure, under the circumstances, whether it may trigger his or her mandatory obligation to withdraw from the representation under Rule 1.16 of the Rules of Professional Conduct.

ISSUE PRESENTED

Does the business entity’s request to collect the cost of the unpaid activities through the small claims process require the inquiring attorney to withdraw from the representation under Rule 1.16 of the Rules of Professional Conduct?

OPINION

It is the Panel’s opinion that the business entity’s request to collect the cost of the unpaid activities through the small claims process does not require the inquiring attorney to withdraw from the representation under Rule 1.16 of the Rules of Professional Conduct.

REASONING

Rule 1.16, governing the declination or termination of a representation, provides that:

(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 professional 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.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(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.

Mandatory withdrawal is required under Rule 1.16 only under certain circumstances. First, “[a] lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law,” although he or she “is not obliged to decline or withdraw simply because the client suggests such a course of conduct” Rule 1.16, Comment [2]. Second, a lawyer must also withdraw when affirmatively discharged by his or her client. See Rule 1.16, Comment [5] (observing that “[a] client has a right to discharge a lawyer at any time, with or without cause . . .”).

Here, the Panel finds that neither basis for mandatory withdrawal is present. There is no question that the business entity wishes for the inquiring attorney to continue in the representation, as it has asked him or her to collect the cost of unpaid services rendered under past management through the small claims process. While the Panel cannot comment on the legal merits of this request, there are several cognizable avenues of potential relief the inquiring attorney may pursue to recoup payment for the products delivered, such as quantum meruit. Thus, the business entity's request does not compel the inquiring attorney to engage in any illegal or unethical conduct. Accordingly, withdrawal is not required here under Rule 1.16(a). See Rhode Island Supreme Court Ethics Advisory Panel Op. 2008-02 (finding that the inquiring attorney was not required to withdraw from a representation because he or she only suspected, but did not possess any definitive proof demonstrating, that his or her client had lied regarding the circumstances of a motor vehicle accident).

In rendering this advice, the Panel notes that the inquiring attorney may still choose to withdraw from the representation if one or more of the elements of Rule 1.16(b) is met. See, e.g., Rhode Island Supreme Court Ethics Advisory Panel Op. 89-16 (permitting the inquiring attorney to withdraw from a representation where the client insisted on pursuing a course of conduct the inquiring attorney found to be “repugnant” and with which he or she had a “fundamental disagreement”). “In deciding whether withdrawal is appropriate under the Rules, the inquiring attorney . . . must exercise his/her independent professional judgment mandated by Rule 5.4(c).” Rhode Island Supreme Court Ethics Advisory Panel Op. 2008-02.

Should the inquiring attorney choose to withdraw, he or she must take all reasonable steps to mitigate the consequences of the withdrawal to the business entity. See Rule 1.16, Comment [10]. This may include, but is not limited to, “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.” Rule 1.16(d). This is a non-exhaustive list of mitigation steps; the particular circumstances of the matter may require additional efforts. See Hazard, Hodes, Jarvis, and Thompson, The Law of Lawyering, § 21.18 n. 56, pg. 34 (2023).