

Final

**Rhode Island Supreme Court
Ethics Advisory Panel Op. 2020-02
Issued December 15, 2020**

FACTS

The Panel has been asked whether it is a violation of Rule 3.6 (Trial publicity) and Rule 3.8(e) (Special responsibilities of a prosecutor) of the Rules of Professional Conduct, for lawyers in the Office of the Attorney General to advise law enforcement agencies to release police body-worn-camera video in response to public records requests. A document entitled “The Attorney General’s Protocol for the Review of Incidents Involving the Use of Deadly Force, Excessive Force and Custodial Deaths” dated June 17, 2020, includes a directive to law enforcement agencies requiring that public release of video and audio recordings be made in accordance with the law. An update to the Protocol requires law enforcement agencies to consult with the Office of the Attorney General when they are presented with a public records request for pre-trial release of body-worn-camera footage.

OPINION

It is the opinion of the Panel that it is not a violation of Rule 3.6¹ and Rule 3.8(e)² for the Attorney General and lawyers in the Office of the Attorney General to release, or to advise law enforcement agencies to release, police body-worn-camera video or similar video footage, in response to a public records request and in compliance with the Rhode Island Access to Public Records Act. See N.J. Advisory Committee on Professional Ethics, ACPE Docket No. 03-2018, Mar. 23, 2018 (prosecutors’ compliance with proper public document requests for dash-cam and body-worn camera footage of police deadly-force incidents is consistent with Rules 3.6 and 3.8.)

Should lawyers in the Office of the Attorney General advise law enforcement agencies to release body-worn-camera video or similar video footage, Rule 3.8(e) also requires that they advise law enforcement agencies to refrain from making extrajudicial statements that the prosecutor would be prohibited from making under Rule 3.6 (comments

¹ Rule 3.6. **Trial publicity** states in pertinent part: (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

² Rule 3.8. **Special responsibilities of a prosecutor.** The prosecutor in a criminal case shall: (e) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

that have a substantial likelihood of prejudicing an adjudicative proceeding), or under Rule 3.8(e) (comments that have a substantial likelihood of heightening public condemnation of an accused.)

Whether body-worn-camera video and similar video footage are public records under the Rhode Island Access to Public Records Act; whether release of specific body-worn-camera video or similar video footage is required under the Act; and whether any portion of The Protocol conflicts with the Act or other law, are issues of substantive law for judicial determination that are outside the jurisdiction of the Panel. The Panel's guidance is limited to interpretation of the Rules of Professional Conduct and does not extend to any other rules, regulations, or laws that may have bearing on the issues raised by this inquiry.