Chicago Council
OF LAWYERS
Chicago's public interest bar association

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March 16, 2026

Department of Justice
Notice of Proposed Rulemaking
Docket No. OAG199

Re: "Review of State Bar Complaints and Allegations Against Department of Justice Attorneys."

The Chicago Council of Lawyers objects to the Department of Justice's proposed rule entitled "Review of State Bar Complaints and Allegations Against Department of Justice Attorneys," published at 91 Fed. Reg. 10780 et seq. (March 5, 2026).[1]

Under DOJ's proposed rule, the Attorney General would "establish a process for reviewing [state] bar complaints and allegations against its attorneys." DOJ would have "the right to review the allegations in the first instance," a right it would couple with a "request that the bar disciplinary authority suspend any parallel investigations until the completion of the Department's review." Should the state bar disciplinary authority refuse or ignore the AG's request to suspend its investigation, DOJ would "take appropriate action to prevent the bar disciplinary authorities from interfering with the Attorney General's review of the allegations." DOJ's proposed right of first review would apply to any current or former Department attorney against whom a complaint has been made that the "attorney violated an ethics rule while engaging in that attorney's federal duties."

The proposed rule is grievously flawed, and DOJ should withdraw it.

1. DOJ's proposed rule is contrary to law.

The Supreme Court has pointed out that "[s]ince the founding of the Republic, the licensing and regulation of lawyers has been left *exclusively* to the States and the District of Columbia" and that those jurisdictions "*are responsible for the discipline of lawyers*." *Leis v. Flynt*, 439 U.S. 438, 442 (1979) (emphasis added). DOJ's proposed rule would upend this well-established regulatory and disciplinary system without constitutional or statutory authority to do so.

[1] The Chicago Council of Lawyers is a public interest bar association, founded in 1969, that works to promote the rule of law, strengthen democratic institutions, and advance a justice system grounded in fairness, equality, transparency, and respect for human dignity.

Indeed, Congress has expressly prohibited exactly the type of preemptive process the proposed rule would establish. The McDade Amendment, 28 U.S.C. § 530B, provides that DOJ attorneys "*shall* be subject to State laws and rules . . . governing attorneys in each state where such attorneys engage[] in the attorney's duties, *to the same extent and in the same manner as other attorneys in that state*" (emphasis added). DOJ's proposed rule, which would establish an entirely separate regulatory and disciplinary regime exclusively for DOJ attorneys, therefore does the opposite of what the statute expressly requires.

The McDade Amendment also provides that "the Attorney General shall make and amend rules of the Department of Justice to assure compliance with this section." 28 U.S.C. § 530B(b). The authority of the AG to "make and amend rules" under this provision is therefore subject to the statute's directive that such rules and amendments "assure compliance" with the requirements of § 530B, including subsection (a), quoted above. But as explained above, DOJ's proposed rule, far from assuring compliance with § 530B(a), abrogates those requirements. DOJ's reliance (at 91 Fed. Reg. 10783) on § 530B(b) as authority for the proposed rule is therefore misplaced and untenable.

2. DOJ's proposed rule creates a likelihood of indefinite delay and non-enforcement of state disciplinary rules.

The proposed rule invokes DOJ's "commit[ment] to upholding the highest standards of ethics among its attorneys," 91 Fed. Reg. 10781, and repeatedly suggests that the rule is faithful to that commitment. But fidelity to the highest standards of legal ethics requires, at a minimum, prompt, full, and fair investigations of complaints by the regulatory and disciplinary authorities—exclusively state authorities, as the Supreme Court stated in *Leis*—charged with conducting such investigations.

The proposed rule, however, does not require DOJ to conduct any investigation at all of a complaint alleging unethical conduct by a DOJ attorney. It requires only that DOJ have a right of first "review" of such complaints, while state regulatory and disciplinary authorities must stand down for however long DOJ takes to complete that review. Moreover, the proposed rule contains no deadline for DOJ's completion of its review. DOJ may therefore continue its review—if it conducts one at all—indefinitely. Any investigation by the state disciplinary authorities would likewise be sidelined indefinitely, resulting in the effective non-enforcement of state disciplinary rules against DOJ attorneys.

DOJ's principal justification for the proposed rule is two-fold. First, it asserts that "political activists" have engaged in a wholesale "weaponization" of state bar complaints against DOJ attorneys, including its most senior officials as well as "career Justice Department attorneys." 91 Fed. Reg. 10782. Second, it asserts that state disciplinary authorities are too ready to credit such complaints. *Id.* ("Even more troubling than the recent spate of State bar complaints … is the willingness of State bar disciplinary authorities to give credence to such complaints."). If DOJ believes that most complaints against its attorneys are insubstantial, if not frivolous, the proposed review mechanism is likely to function in practice not as an occasional procedural protection but as a standing shield against investigation.

Numerous public reports of senior DOJ officials pressuring Department lawyers to comply with agenda-driven directives—even when doing so would risk violating their ethical obligations—do not inspire confidence that DOJ would conduct a searching and objective review of bar complaints alleging violations of state professional-conduct rules.

For these reasons, DOJ should withdraw the proposed rule.

Chicago Council of Lawyers